



UNITED NATIONS
Office on Drugs and Crime



Handbook for
prison managers and
policymakers on
**Women and
Imprisonment**

CRIMINAL JUSTICE HANDBOOK SERIES

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Handbook for Prison Managers and Policymakers on Women and Imprisonment

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Introduction

Whom the handbook is for

The present handbook forms part of a series of tools developed by The United Nations Office on Drugs and Crime to support countries in implementing the rule of law and the development of criminal justice reform. It is designed to be used by all actors involved in the criminal justice system, including policymakers, legislators, prison managers, prison staff, members of non-governmental organizations and other individuals interested or active in the field of criminal justice and prison reform. It can be used in a variety of contexts, both as a reference document and as a training tool.

What the handbook covers

The main focus of the handbook is female prisoners¹ and guidance on the components of a gender-sensitive approach to prison management, taking into account the typical background of female prisoners and their special needs as women in prison (chapters 1 and 2).

Two special categories of female prisoners have been included in this section of the handbook: pre-trial detainees and foreign national women (chapter 2, sections 11.1 and 11.2). These two groups were selected because their vulnerability and special needs are particularly pronounced due to the cumulative effects of their status and gender. For other groups, such as women prisoners from ethnic and racial minority groups and indigenous peoples, older women prisoners, women with disabilities and women under sentence of death, the reader should refer to the *UNODC Handbook on Prisoners with Special Needs*, which covers the needs of such prisoners, men and women. Reference will need to be made to both handbooks, when dealing with the situation of such categories of female prisoners. This handbook also does not cover issues relating to girls in conflict with the law, even though it contains a short chapter

¹The term “prisoner” is used to refer to all persons detained or imprisoned on the basis of, or allegation of, a criminal offence, including pre-trial, under-trial detainees and convicted and sentenced prisoners.

on girls in prisons. The reason for that is that juvenile justice should be separate from adult criminal justice and that girls' needs as a vulnerable group in prison differ from women's needs.

In view of the significant rise in the rate of women's imprisonment in many countries worldwide, the handbook also provides an overview of measures that could be taken to reduce the female prison population (chapter 3). It puts forward some recommendations, taking into consideration the most common offences which lead to women's imprisonment and the harmful effects of imprisonment on the social reintegration of a large majority of female offenders. It must be emphasised that this section of the handbook does not provide a comprehensive examination of the reasons for the growing rate of women's imprisonment in different regions and countries, nor detailed guidelines on how this challenge may be addressed in different contexts. Neither does it provide a thorough overview of the impact of women's imprisonment on their children, though this is a key concern that is repeatedly highlighted in the handbook. It covers some of the issues that stand out in relation to women's increasing imprisonment, and a number of measures that can reduce their rate of incarceration, when it does not serve the purposes of justice or social reintegration. By highlighting and drawing attention to some key issues, this chapter aims to generate further research and the development of policies and strategies to reduce the female prison population in different countries and regions worldwide. In this context, readers may also wish to consult the *UNODC Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment* and the *UNODC Handbook on Restorative Justice Programmes* for further practical guidance.

The handbook does not offer guidance on all aspects of prison management which apply to the situation of all prisoners, including women.² Therefore it should be used in conjunction with general prison management manuals and relevant international instruments covering the treatment of all prisoners.³

Why a handbook

Women continue to constitute a very small proportion of the general prison population worldwide.⁴ However, not only are their numbers increasing in tandem with the rise in the overall prison population in many countries, but studies in some countries have shown that the number of female prisoners is increasing at a faster rate than that of male prisoners. For example, in the United States the number of women serving sentences of more than a year grew by 757 per cent between 1977 and 2004—nearly

²The term "prisoner" is used to refer to all persons detained or imprisoned on the basis of, or allegation of, a criminal offence, including pre-trial, under-trial detainees and convicted and sentenced prisoners.

³For example, the handbook does not provide general guidelines on staff training, safety and security in prisons, principles that apply to prisoners' contact with the outside world, principles and practices relating to general health-care in prisons, among many others. E.g. the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR), Body of Principles for the Protection of all Persons Under any Form of Detention or Imprisonment and Basic Principles for the Treatment of Prisoners, in particular.

⁴Women usually constitute between 2 and 9 per cent of a country's prison population, although exceptionally the percentage may be higher. See Walmsley, R., *World Female Imprisonment List 2006*, International Centre for Prison Studies, www.prisonstudies.org.

twice the 388 per cent increase in the male prison population.⁵ In England and Wales the number of women in prison has more than doubled over the past decade, while the number of men has increased by half.⁶ Between 1984 and 2003, in Australia there was a 75 per cent increase in the imprisonment of men whereas women's imprisonment soared by 209 per cent.⁷ A similar trend was noted in Mexico, Bolivia, Colombia, Kenya, New Zealand, Kyrgyzstan between 1994 and 2004,⁸ and in a number of countries in Europe, such as Cyprus, Estonia, Finland, Greece and the Netherlands in the same years.⁹

Toughening criminal justice policies worldwide has meant that a growing number of women are being imprisoned for petty offences. In some countries tough legislation for drug-related offences has had a significant impact on the numbers of women in prison and the rate of their increase. In countries where legislation derives from certain interpretations of religious laws, women are often discriminated against, and imprisoned for so-called moral crimes. Vulnerable and economically disadvantaged, women are increasingly likely to be detained pre-trial, due to their inability to afford bail or the services of a lawyer. In many countries the proportion of women held in pre-trial detention is equivalent to, or larger than that of convicted female prisoners. In some countries the rate is growing faster than that of male pre-trial detainees, despite the principle set out in international instruments that "pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim".¹⁰

The majority of these women do not need to be in prison at all. Most are charged with minor and non-violent offences and do not pose a risk to the public. Many are imprisoned due to their poverty and inability to pay fines. A large proportion is in need of treatment for mental disabilities¹¹ or substance addiction, rather than isolation from society. Many are victims themselves but are imprisoned due to discriminatory legislation and practices. Community sanctions and measures would serve the social reintegration requirements of a vast majority much more effectively than imprisonment.

Although research is unanimous in underlining the particularly detrimental effects of prison on women, their special needs are rarely taken into consideration during

⁵Frost, N. A., et. al, *The Punitiveness Report, Hard Hit: The Growth in Imprisonment of Women, 1977-2004*, Institute on Women and Criminal Justice, May 2006, p. 9.

⁶Prison Reform Trust, *Bromley Briefings Prison Factfile*, April 2006, p. 4.

⁷Bastick, M., *Women in prison: a commentary on the Standard Minimum Rules for the Treatment of Prisoners*, Discussion draft, Quaker United Nations Office, Geneva, July 2005, p. 3.

⁸*Ibid.*, p. 3.

⁹*Women in Prison, A Review of the Conditions in Member States of the Council of Europe*, The Quaker Council for European Affairs, February 2007, p. 25.

¹⁰United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), adopted by the General Assembly resolution 45/110 of 14 December 1990, Rule 6.1.

¹¹The umbrella term mental disability is used to include major psychiatric disorders, e.g. schizophrenia and bipolar disorder; more minor mental health problems, often referred to as psychosocial disabilities, e.g. mild anxiety disorders; as well as intellectual disabilities, following the terminology used by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. (See Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, Commission on Human Rights, Sixty-first Session, Economic, Social and Cultural Rights, UN Doc. E/CN.4/2005/51, 11 February 2005, para. 19). In this handbook the term mental disability refers predominantly to psychosocial disabilities.

imprisonment. The fact that the proportion of male prisoners has always been vastly larger than that of women in the prison system has resulted in a general disregard to the gender-specific needs of women, as well as a denial of many services and opportunities, accessible to male prisoners. The failure of imprisonment to address the underlying factors leading to offending behaviour by women is reflected in the increasing rate of re-offending among women in some countries.

The change in the composition of the prison population has highlighted the shortcomings in almost all prison systems in meeting the gender-specific needs of women prisoners.

In this context, there are two key issues to consider:

The main international standards relating to the treatment of prisoners, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Basic Principles for the Treatment of Prisoners apply to all prisoners without discrimination. However, practice has shown that, due to their small numbers, women prisoners are discriminated against in many ways and the rules included in these instruments cannot be applied in all cases, often for practical reasons. Therefore guidance is needed as to ways in which such discrimination can be reduced or eliminated by changing management practices and introducing measures that compensate for inadequate facilities and resources to address the special needs of female prisoners.

In addition, though the above-mentioned instruments apply to all prisoners without discrimination, therefore implying that women prisoners' special needs should be taken into account in their application, they do not emphasise these needs. With the increase of the female prisoner population worldwide, the necessity to bring more clarity to particular considerations which should apply to the treatment of female prisoners and ways in which they should be addressed in prison has acquired particular importance and urgency.

The increasing requirement to address the situation of female offenders has been emphasised by the United Nations in various contexts. For example, in 1980 the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted a resolution on the specific needs of women prisoners,¹² which recommended that (a) in the implementation of the resolutions adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, recognition should be given to the specific problems of women prisoners and the need to provide the means for their solution; (b) in countries where it is not yet done programmes and services used as alternatives to imprisonment should be made available to women offenders on an equal basis with male offenders; (c) that the United Nations, the governmental and non-governmental organizations with consultative status and all other international organizations should make continuing efforts to ensure that the woman offender is treated fairly and equally during arrest,

¹²Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, Venezuela, 25 August-5 September 1980, A/CONF.87/14/Rev. 1, Resolution 9, pp. 12-13.

trial, sentence and imprisonment, particular attention being paid to the special problems which women offenders encounter, such as pregnancy and child care.

With the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, adopted by the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which was endorsed by the General Assembly Resolution 55/59 on 4 December 2000,¹³ Member States of the United Nations declared that they committed themselves (a) to taking into account and addressing, within the United Nations Crime Prevention and Criminal Justice Programme, as well as within national crime prevention and criminal justice strategies, any disparate impact of programmes and policies on women and men; (b) to the development of action-oriented policy recommendations based on the special needs of women as prisoners and offenders.

The United Nations General Assembly resolution on human rights in the administration of justice, adopted on 22 December 2003 called for increased attention to be devoted to the issue of women in prison, including the children of women in prison, with a view to identifying the key problems and ways in which they can be addressed.¹⁴

The United Nations General Assembly resolution 61/143 on the intensification of efforts to eliminate all forms of violence against women, adopted on 19 December 2006, stressed that “ ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including arbitrary deprivation of liberty, whether occurring in public or in private life”, and urged States, among others, “[t]o review and, where appropriate, revise, amend or abolish all laws, regulations, policies, practices and customs that discriminate against women or have a discriminatory impact on women, and ensure that provisions of multiple legal systems, where they exist, comply with international human rights obligations, commitments and principles, including the principle of non-discrimination”; “[t]o take positive measures to address structural causes of violence against women and to strengthen prevention efforts that address discriminatory practices and social norms, including with regard to women who need special attention..... such as.....women in institutions or in detention...”, among others; and to provide training and capacity-building on gender equality and women’s rights for law enforcement personnel and the judiciary, among others.¹⁵

This handbook aims to assist legislators, policymakers, prison managers, staff and non-governmental organizations to implement the resolutions and recommendations of the United Nations to address the gender-specific needs of women prisoners, as well as to increase awareness about the profile of female offenders and suggest ways in which to reduce their unnecessary imprisonment, by rationalising legislation and criminal justice policies, and providing a wide range of alternatives to prison at all stages of the criminal justice process.

¹³General Assembly, resolution A/RES/55/59, Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, 17 January 2001.

¹⁴General Assembly, resolution A/RES/58/183, Human rights in the administration of justice, 18 March 2004, para. 15.

¹⁵General Assembly, resolution A/RES/61/143, Intensification of efforts to eliminate all forms of violence against women, 30 January 2007, items 3, 8 (c), (f) and (m).

1. The special needs of female prisoners

Women constitute a vulnerable group in prisons, due to their gender. Although there are considerable variations in their situation in different countries, the reasons for and intensity of their vulnerability and corresponding needs, a number of factors are common to most.

These include:

- The challenges they face in accessing justice on an equal basis with men in many countries;
- Their disproportionate victimization from sexual or physical abuse prior to imprisonment;
- A high level of mental healthcare needs, often as a result of domestic violence and sexual abuse;
- Their high level of drug or alcohol dependency;
- The extreme distress imprisonment causes to women, which may lead to mental health problems or exacerbate existing mental disabilities;
- Sexual abuse and violence against women in prison;
- The high likelihood of having caring responsibilities for their children, families and others;
- Gender-specific healthcare needs that cannot adequately be met;
- Post-release stigmatization, victimization and abandonment by their families.

1. Challenges in accessing justice

Although all individuals living in poverty face immense challenges in accessing justice in many countries worldwide, the difficulties women face are intensified by many factors directly related to their gender. The scope of this handbook does not allow the examination of multiple layers of discrimination that women face in all spheres of life, that directly or indirectly, lead to their contact with, and extreme vulnerability in, the criminal justice system. These include discrimination in areas

such as education, employment, marriage, divorce, reproductive rights and mobility, among many others.

Key factors to note in the context of this handbook are that many women in the criminal justice system are from poor and marginalized sectors of communities or from societies where the education of women is not the norm, due to role models imposed on the female gender, based on religion, custom or stereotypical perceptions of women's position in society. Thus a large majority of women who are detained not only do not have the economic means to hire a lawyer, but they are very often illiterate and unaware of their legal rights. This places them in a particularly vulnerable position, at risk of signing statements that have serious legal implications and of being open to coercion. At the very least, the lack of legal representation can lead to immense delays in the criminal justice process, and less chances of defendants being considered for bail, for example, taking into account women's caring responsibilities for their children and others.

Women are also vulnerable to sexual abuse and other forms of violence in detention, which may be used to force them to confess to offences they have not committed. In some societies the interrogation by men is likely to intimidate women who have hitherto had scant contact with unrelated men. This also contains a threat of sexual abuse, whether or not such a threat is realized. There are numerous reports of illiterate and poor women signing statements (often with a thumbprint), the contents of which they do not understand. In some systems where there is over-reliance on confession as evidence, uncorroborated confessions can form the basis for conviction.

Non-resident foreign national women are especially vulnerable during this whole process, due to language barriers, lack of any social networks to assist them in most cases, even less awareness of legal rights in a foreign country and extreme vulnerability to abuse.

2. History of victimization and mental healthcare needs

Female prisoners in the United States

- According to one report, more than 43 per cent of women prisoners (but only 12 per cent of men) had suffered from physical or sexual abuse before their admission to prison in 1991.^a Another report states that 85 per cent of women prisoners have been physically or sexually abused at some time in their lives.^b
- 50 per cent of women in state prisons described themselves as a daily user of drugs, 25 per cent were under the influence of drugs at the time of the offence. Over 30 per cent said they had committed the offence which brought them to prison in order to obtain money to support their need for drugs (1998).^c

- According to a study carried out by the Bureau of Justice Statistics in 2002 and 2004, mental health problems in prison were found to be much higher among women than men: 73 per cent of women and 55 per cent of men in state prisons; 61 per cent of women and 44 per cent of men in federal facilities; 75 per cent of women and 63 per cent of men in jails had mental health problems.^d

Female prisoners in Canada^e

- 82 per cent of the 102 women surveyed at the Prison for Women and 72 per cent of the 68 women surveyed inside provincial prisons reported being survivors of physical or sexual abuse.
- Two-thirds of federally sentenced women had children. Many of these women had tremendous concern over lost custody of one or more of their children and reported that contact with their children, regardless of their age, was essential to personal well-being.

Female prisoners in the United Kingdom

- 80 per cent of women prisoners suffer from diagnosable mental health problems^f
- 66 per cent are drug dependent or use alcohol to dangerous excess^g
- 50 per cent have experienced domestic violence^h
- 33 per cent have suffered from sexual assaultⁱ
- Around one-third of women prisoners lose their homes, and often their possessions, whilst in prison^j
- 37 per cent say that they have attempted suicide at some time in their life^k

Female prisoners in Europe

- It is estimated that in 2002, 75 per cent of women entering European prisons were problematic drug and alcohol users.^l Existing research also indicates that women prisoners are more likely to be addicted to harder drugs than male prisoners.^m

^dThe United States Bureau of Justice Statistics survey of State prison inmates for 1991, in National Institute of Justice Research in Brief, August 1998, p. 1.

^eInformation from New York State Governor's Office, cited in Report of the Special Rapporteur on violence against women, its causes and consequences, Ms Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1997/44, Addendum, Report of the mission to the United States of America on the issue of violence against women in state and federal prisons, United Nations Document, E/CN.4/1999/68/Add.2, 4 January 1999, para. 16.

^fBureau of Justice Statistics, Special Report "Women Offenders", December 1999, Revised 10.3.2000, p. 9.

^gSniffen, M. J., the Associated Press report, 7 September 2006.

^hCorrections and Conditional Release Act, Five-Year Review, Women Offenders February 1998, citing a survey conducted in 1990.

ⁱThe Howard League for Penal Reform, Press Release, 20 June 2006.

^jIbid.

^kIbid.

^lIbid.

^mPrison Reform Trust, Bromley Briefings Prison Factfile, April 2006, p. 16.

ⁿIbid.

^oWomen in Prison, A Review of the Conditions in Member States of the Council of Europe, op. cit., p. 12, citing "Health Care Needs of Women in Prison": The Gap Between Policy and Implementation", MacDonald M. presentation at "What Works with Women Offenders", June 2005.

^pIbid., p. 12.

Widespread domestic violence against women and their sexual abuse prior to imprisonment have been documented in countries worldwide. Women who are admitted to prison are more likely than men to suffer from mental disabilities, often as a result of domestic violence, physical and sexual abuse.

Imprisonment generates new mental health problems or exacerbates existing ones. In most communities women are carers, sometimes the sole carers, of their families and the sudden change of their role from caregiver to “criminal” and isolation from loved ones usually have an intensely adverse affect on their mental wellbeing.

Consequently, research in some countries has found that mental disabilities among female prisoners are more common compared to male prisoners, and that women are much more likely than men to harm themselves or to attempt suicide, which highlights the need to provide appropriate mental health services oriented to the gender-specific needs of women offenders.¹⁶

Women’s mental health is likely to deteriorate in prisons which are overcrowded, where differentiation of prisoners based on a proper assessment is not made and prisoner programmes are either non-existent or inadequate to address the specific needs of women. The harmful effects on mental health are exacerbated when women do not feel safe, if they are supervised by male staff and feel at risk of further abuse.

3. Gender-specific healthcare needs

Female prisoners, typically from economically and socially disadvantaged backgrounds, and many women in low-income countries suffer from a variety of health conditions which may be untreated in the community. In many countries women face additional discrimination and barriers in accessing adequate healthcare services in the community, due to their gender. Therefore female prisoners often have greater primary healthcare needs in comparison to men.¹⁷ Their condition may become worse in prisons due to the absence of adequate medical care, lack of hygiene, inadequate nutrition and overcrowding. In addition, all women have gender-specific medical requirements and need to have regular access to specialists in women’s healthcare.

In many countries worldwide healthcare in women’s prisons encompasses a large number of children living with their mothers, as well as the medical care of pregnant women and nursing mothers, with which most prison services are not equipped to cope. (See also section 6, “pregnancy and women with children”).

¹⁶ See for example, Laishes, J., *The 2002 Mental Health Strategy for Women Offenders*, Correctional Service Canada, 2002, pp. 6-7 (http://www.csc-scc.gc.ca/text/prgrm/fsw/mhealth/toc_e.shtml); Ross, H., Glaser, F., & Stiasny, S. (1988); Sex differences in the prevalence of psychiatric disorders in patients with alcohol and drug problems. *British Journal of Addictions*, 83, 1179-1192; Prison Reform Trust Factfile, p. 16, with information from Prison Service (June 2004) *Safer Custody News*, London, Prison Service; Rickford, D., *Troubled Inside: Responding to the Mental Health Needs of Women in Prison*, Prison Reform Trust, 2003, pp. 4 and 17.

¹⁷ Möller, L., Stöver, H., Jürgens, R., Gatherer, A. and Nikogasian, H., eds., *Health in Prisons, A WHO Guide to the essentials in prison health*, WHO Europe (2007), p. 27.

Prison health services are usually ill-equipped, understaffed, under-resourced and too often isolated from other national health services.¹⁸ In many countries they encounter immense challenges in providing adequate basic healthcare services. They are even less able to offer women the gender-specific medical care they need.

3.1 Sexual and reproductive ill-health

Violence against women, especially sexual violence, has numerous short- and long-term sexual and reproductive health consequences for victims. As such, women prisoners represent a high-risk group for sexual and reproductive health diseases, including cancer.

Women have a particular physical vulnerability to HIV. Studies have shown that women are at least twice as likely as men to contract HIV through sex. The pre-existence of sexually transmitted diseases (STD) can greatly increase the risk of contracting HIV.¹⁹ Due to the typical background of female prisoners, which can include injecting drug use, sexual abuse, violence, sex work and unsafe sexual practices, a significant number of women are infected with STD, including HIV and hepatitis, at the time they enter prison. Thus, the proportion of women in prison with an STD is relatively very high.²⁰

In some countries where tuberculosis is prevalent, such women will also be at higher risk of tuberculosis infection.

Women prisoners and health conditions in the Russian Federation

According to a study on women prisoners in the Russian Federation, between one third and one half of women arrive in prisons infected with STDs, syphilis in particular. Over 5 per cent of female prisoners are HIV positive. HIV is often accompanied with hepatitis C. 3-5 per cent of women suffer from active forms of tuberculosis. Other widespread health conditions include alcoholism, drug addiction, somatic diseases as cardiovascular and gynaecological problems.^a

Women prisoners and health conditions in South Africa^b

Imprisoned women in South Africa not only have conventional health care needs but are often exposed to diseases such as tuberculosis, sexually transmitted diseases, hepatitis B and C, as well as HIV/AIDS. Since it is not obligatory in South Africa to be tested for HIV/AIDS, existing statistics cannot indicate the percentage of infected women in South African prisons. However, the death rate due to natural causes increased from 0.09 per cent in 1990 to 3.73 per cent in 2003/04 in the general prison population in South African prisons.^c

Women prisoners and hepatitis C in Australia

Australian research examining the health of incarcerated parents found that 68 per cent of all mothers in prison are infected with hepatitis C, as compared to 42 per cent of fathers.^d

¹⁸ See WHO Europe, Declaration on Prison Health as part of Public Health, Moscow 24 October 2003.

¹⁹ Women and HIV in Prison Settings, HIV/AIDS Unit, UNODC, p. 3. www.unodc.org/unodc/en/drug_demand_hiv_aids.html

²⁰ Ibid., p. 3.

Women prisoners and HIV in the United States

In the United States, in 2004, the overall HIV prevalence among imprisoned men was 1.7 per cent compared to 2.4 per cent among women. However, in some states, such as New York, the HIV prevalence was 14.2 per cent among women and 6.7 per cent among men.^e

Women prisoners and HIV in Brazil

20 per cent of the women prisoners tested for the AIDS virus at the Women's Penitentiary in São Paulo were found to be HIV-positive in 1997. A large proportion of these women is thought to have contracted HIV via shared injection equipment, a conclusion based on the high frequency of drug use within this population.^f

Women prisoners and HIV in Moldova

In Moldova in 2006, HIV prevalence among women in prison was 3 per cent, compared to 2 per cent among incarcerated men.^g

^eAlpern, Women and the System of Criminal Justice in Russia: 2000-2002. (The study states that the figures are estimated, since precise data on diseases of female prisoners in Russia are not available).

^bDr. Nicolien du Preez, College of Law, Department of Penology, University of South Africa, personal communication.

^cW. F. M Luyt, A critical view on HIV/AIDS in South African prisons within the framework of the Dublin Declaration on HIV/AIDS in prisons, 2005, p. 71-89.

^dWomen in prison: a commentary on the Standard Minimum Rules for the Treatment of Prisoners, op. cit., p. 51, citing NSW Corrections Health Service; Inmate Health Survey Report; 2003.

^eWomen and HIV in Prison Settings, HIV/AIDS Unit, UNODC, p. 3, with reference to United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Bulletin HIV in Prisons, 2004, November 2006, NCJ 213897.

^fHuman Rights Watch, Behind Bars in Brazil, Section XI Women Prisoners, 1998 (accessed at: www.hrw.org/reports98/brazil/Brazil-12.htm).

^gWomen and HIV in Prison Settings, op. cit. p. 3, with reference to Pintelei L., 2007, Communication IHRC, Warsaw.

In some countries where abortions are criminalized, women who have delivered a stillborn child, have not registered the birth or death of the child, have had a miscarriage or undertaken an illegal abortion, may be detained or imprisoned on charges of concealment of childbirth, infanticide or homicide. For example, WHO reported that before the 2002 law change in Nepal, an estimated 20 per cent of the women prisoners nationwide were in jail for charges relating to abortion or infanticide.²¹ Many women who had miscarriages, stillbirths, or induced abortions were jailed on charges of infanticide. In some countries, women and young girls continue to be imprisoned on charges of infanticide, concealment of birth or culpable homicide, following miscarriages, the death of their babies or due to illegal abortions. Such women may face the death penalty.

Given the perception of criminality surrounding their circumstances, such women's medical and psychological healthcare needs, resulting from childbirth, stillbirth or abortion, are unlikely to receive any special attention in prison. Such women are at

²¹ David A. Grimes, Janie Benson, Susheela Singh, Mariana Romero, Bela Ganatra, Friday E. Okonofua, Iqbal H. Shah, Unsafe Abortion, the Preventable Pandemic in World Health Organisation, Sexual and Reproductive Health, 4, Journal Paper, Unsafe abortion, the preventable pandemic, p. 6.

particular risk of health complications during the period they spend in pre-trial detention, immediately following an abortion or complication during delivery. Those who have recently given birth require post-natal care, but in many countries are unlikely to be included in treatment programmes, where they exist. See also section 6.2, “pregnant women and women with children in prison”.

3.2 Substance abuse

A large number of female prisoners worldwide are in need of treatment for substance addiction, though only a minority have access to treatment programmes. In addition, it is increasingly recognized that women have distinctive needs in relation to substance abuse treatment, though few programmes offer specialized services for them.

When drug addiction is untreated in prison, the likelihood of re-offending is high, either on drugs charges or due to theft or illegal sex work, often to finance the addiction.

Studies indicate that women with substance abuse problems are more likely than men to have experienced physical and/or sexual abuse.²² A history of violent assault can increase the risk of substance use and post-traumatic stress disorder or other mental health problems. It has been reported that rates of post-traumatic stress disorder among women in substance abuse treatment range from 30 to 59 per cent.²³ Some findings have indicated that the odds of women with coexisting psychiatric disabilities being returned to prison within 12 months of release were increased by 58 per cent in comparison to women with only a substance addiction. (Compared to 40 per cent in men).²⁴

Drug-addicted former prisoners are also at a higher risk of death resulting from overdose, compared to the general population. For example, according to research carried out in the United Kingdom, in the week following release, prisoners were 40 times more likely to die than the general population. In this period, immediately after release, most of these deaths (over 90 per cent) were associated with drug-related causes.²⁵ In Australia, where former prisoners have death rates ten times that of the general population, with over half of these deaths being heroin-related, women appear to be especially susceptible. Female ex-prisoners were 27 times more likely to die an unnatural death than their counterparts in the general population.²⁶

Research findings have suggested a need for further investigation into the gender-specific needs of substance addicted female offenders and the design of appropriate

²² UNODC *Drug Abuse Treatment Toolkit*, Substance abuse treatment and care for women: Case studies and lessons learned, United Nations, New York, 2004, p. 9.

²³ *Ibid.*, p. 10.

²⁴ Messina, N., Predictions of prison-based treatment outcomes: a comparison of men and women participants, *American Journal of Drug and Alcohol Abuse*, February 2006.

²⁵ Singleton, N., Pendry, E., Taylor, C., Farrel, M. and Marsden, J., Drug-related mortality among newly released prisoners, Home Office, Research, Development and Statistics Directorate, London, 2003, p.1.

²⁶ Post-release support for women prisoners—processes of psychological and social transition, ARC Linkage Project LP0560398 (www.criminology.unimelb.edu.au/research/arc_grants/mentoringwomenprisoners), citing Graham A., 2003.

programmes to match,²⁷ and work in the area of gender and drug abuse has been carried out by UNODC, referred to in chapter 2, section 6.6. Research has consistently pointed to the need for a greater emphasis to be placed on promoting appropriate aftercare treatment for prisoners, regardless of their gender.

It is clear that the high proportion of substance dependent female prisoners, the absence of gender-specific, or even standard treatment programmes in most prisons, coupled with the particular difficulties they face after release put women at a high risk of reoffending, while continuing with their substance abuse, possibly with tragic results.

4. Safety in prisons

In many countries women are sexually abused and humiliated by law enforcement officials, including in prisons. Such abuse can range from subtle humiliation to rape. The former can include verbal abuse, improper touching during pat-down searches, frequent and unnecessary searching and spying on prisoners during showers and in living areas. Rape may take place in the form of sexual services which women prisoners are forced to provide in return for access to goods and privileges or to enjoying their most basic human rights. Sexual abuse of women by male prisoners may take place with the complicity of prison guards. Women who have been charged with or convicted of crimes against morality, as well as lesbian, bisexual or transgender women, are at particular risk. (See also *UNODC Handbook on Prisoners with Special Needs*, chapter on “lesbian, gay, bisexual and transgender (LGBT) prisoners”).

Recognizing the vulnerability of women to sexual abuse, the United Nations Standard Minimum Rules for the Treatment of Prisoners prohibit any involvement of male staff in the supervision of women’s prisons.

However, this rule is not applied in many countries, sometimes due to lack of female prison staff, in other cases because of concerns for equal employment opportunities and in some cases because mixed gender staffing is seen as a component of the normalization of prison life. Unfortunately, this policy can bring with it a high level of real risk for women prisoners, especially when male staff are employed in positions where they have responsibility for the direct supervision of female inmates.

As has been noted by experts, even when there is no actual sexual abuse “[w]hen male officers treat women with disrespect, it has a different impact than having women officers act disrespectfully to male prisoners. Disrespect towards women by male officers is more likely to be sexual in content or implication, and in women who were traumatized by sexual abuse perpetrated by males, it is more likely to be experienced as a “retraumatization.” [. . .] the mere presence of male officers in the housing units where the women toilet, shower, undress and sleep can constitute a

²⁷ Messina, N., Predictions of prison-based treatment outcomes: a comparison of men and women participants, *American Journal of Drug and Alcohol Abuse*, February 2006.

retraumatization. The deprivation of privacy that is inherent in incarceration becomes much more of a deprivation than is necessary to accomplish the proper goals of incarceration. Previously traumatized women who might choose to avoid the gaze of males in order to create a safe place are forced to live in a situation where male officers are constantly present and might intrude on their most personal and private activities at any moment. The woman can develop a generalized fear, and this situation is quite likely to make her symptoms and disability worse and more long-lasting.”²⁸

Torture and abuse of prisoners in custody, immediately after arrest, is more common than during the period of imprisonment. In some countries, where prisoners spend their pre-trial detention in police custody, this period of vulnerability is extended. During this time, women are at particular risk of sexual abuse, including rape, which is used as a tool to coerce and control them and to force them to make confessions. Thus, in countries, where such practices are common, women may be suffering from both the effects of any previous violence and the trauma resulting from their treatment in police custody by the time they are admitted to prison.

In these circumstances prison authorities often fail to protect the human rights of prisoners under their care, with their lack of response to complaints by female offenders about sexual abuse in previous custody, their failure to carry out a medical examination²⁹ and provide the vital legal and psychological support needed by the women. When complaints of sexual abuse or other forms of violence are ignored, the likelihood of custodial violence passing undetected by state authorities is increased, contributing to the lack of protection for women victims of such violence in prison.

Rape and other forms of sexual violence have devastating effects for the victims and are prohibited by international law. Such acts may constitute torture,³⁰ and there can be no question of the social reintegration of female offenders in prisons where they are sexually abused and where they do not feel safe.

5. Accommodation and family contact

The small number of female prisoners worldwide and the resource implications of building sufficient women’s prisons to ensure that women are imprisoned close to their homes, give rise to a situation in which women may either be housed in annexes of male prisons, close to their places of residence, or in women’s prisons, which are most often situated at a long distance from home. Being placed in annexes of male prisons may entail safety risks for the women. It also means that the special needs

²⁸ Excerpt from testimony of Terry Kupers, M.D., M.S.P., in *Everson v. Michigan Department of Corrections* (case no. 00-73133, Feb. 16, 2001, U.S. Dist. Court, E. Dist. of Michigan, Hon. Avern Cohn, Judge) (citations omitted), in “Custody and Control, Conditions of Confinement in New York’s Juvenile Prisons for Girls, Human Rights Watch, American Civil Liberties Union, September 2006, p. 70.

²⁹ The reference to medical examinations should not be confused with virginity tests, carried out in many countries, often without the consent of the woman concerned, and which do not necessarily prove or disprove rape. In general, women’s consent to medical examinations should be sought and complaints should not be disregarded in the absence of such consent.

³⁰ Report of the Committee against Torture, A/51/44.

of female prisoners may not be taken into account, as the regime in the prison will be determined by the needs of the majority male prisoners. Most States have a combination of women's prisons and separate wings for women in men's prisons, which means that, in practice, many women are imprisoned a long distance from their homes, which reduces the possibility for family contact.

The situation can be particularly problematic in large countries, where huge distances need to be covered to reach women's prisons. In the Russian Federation, for example, there are only 40 female penal colonies for women and only three colonies for young girls. This means that women are often imprisoned at a very long distance from their homes. After receiving their sentences, female prisoners may have to travel thousands of kilometres to the places where they will be serving their prison terms. Sometimes travel to prison will take up to two months, with a number of stop-overs in transit prisons (collection stations of a number of regional pre-trial facilities) on the way, where the prisoner may have to spend a week or more.³¹ Although families can travel these distances in relatively short times, the distance and costs involved still pose a major obstacle to regular visits. Similar problems exist in many countries worldwide, particularly in Asia, Africa, Latin America and the United States.³²

It has been reported that in Eastern Europe and Central Asia there is a widespread practice of the requirement for visitors to make financial contributions to the prison authorities for their visits. The practice varies from country to country. In some jurisdictions payment is required both for short and for long visits,³³ in others payment is required only for long visits on a per day/per person basis.³⁴ The requirement to pay for visits has also been reported in other regions.³⁵ These financial contributions place an additional burden on families who also have to pay for transport, making it difficult for them financially to visit their relatives in prison, whether male or female. Since women prisoners suffer particularly from separation from their families, and they are more likely to be housed at a long distance from their homes, which means that the additional financial contributions may render the cost of visits impossible, these rules have a particular impact on female prisoners. It must generally be recognized that such rules appear to be based on the understanding that visits are a privilege rather than a right enjoyed by all prisoners, as reflected in the

³¹Alpern, L., Women and the System of Criminal Justice in Russia: 2000-2002, www.mhg.ru/english/1F4FF6D.

³²For example, according to reports published in October 2007 Hawaii was holding 2,027 of its prisoners in private prisons in Arizona and Kentucky, thousands of kilometres away from their homes. This figure included 175 convicted female prisoners, held in a private prison in Kentucky. In October, discussions were underway to bring them back to Hawaii, to be housed in the Federal Detention Center on O'ahu, due to lack of prison space in the Women's Community Correctional Center in Kailua. It was reported that housing the women in Hawaii would double the cost of holding them in Kentucky, which is the reason why so many prisoners are transported out of Hawaii to be housed elsewhere. Prison reform advocates said most of the women were convicted of non-violent crimes, and some were single mothers. Some of the women prisoners were the sole caregivers for their children before they were sent to prison. Lawmakers and others had questioned the impact that long separations without visits may have on the children and families back in Hawaii. See Kevin Dayton, Advertiser Big Island Bureau, The Honolulu Advertiser, 17 October 2007. (<http://the.honoluluadvertiser.com/article/2007/Oct/17/hn/hawaii710170413.html>).

³³In countries of Eastern Europe and Central Asia, there are generally two types of visits allowed prisoners: short visits, which are the usual visits which do not include an overnight stay and long visits where the visiting families can spend a night or more together with the prisoner in special units set aside in the prison for this purpose.

³⁴For example, in Kazakhstan the per night/per day rate is reported to be around \$3.

³⁵Annual Report on Women Prison Conditions in Sudan Omdurman women's prison, Kousti, Al Fashir, Marawi, Sudan Organisation Against Torture (SOAT), 2003, p. 11.

United Nations Standard Minimum Rules for the Treatment of Prisoners (Rules 37 and 79 in particular).

All women, but particularly women who have been charged with or convicted of crimes against morality, are at risk of being abandoned by their families, which means that they will lack the vital family support during their imprisonment and following release.

The disruption of family links has extremely harmful emotional consequences for women prisoners, especially if they are mothers, with a detrimental impact on their resettlement prospects.

See section 11.2 for the particular difficulties associated with non-resident foreign national prisoners' links with their families.

6. Pregnancy and women with children

6.1 Mothers in prison

Research from many countries has revealed that when fathers are imprisoned, generally the mother continues to care for the children. However, when mothers are imprisoned the family will often break up,³⁶ or as mothers are more often the sole or primary carers within a family, alternative carers will need to be found, which may include state welfare services/institutions. This results in large numbers of children being institutionalized, in state care. Research has also indicated that the children of imprisoned parents are at greater risk of future incarceration themselves.³⁷ In the United Kingdom, for example, it has been estimated that of the 150,000 children who have a parent in prison, 75 per cent will go on to commit a crime.³⁸ In many cases this is sadly a part of the continued cycle of institutionalization, since it is likely that the mothers themselves will have spent at least part of their childhood in state care. One study shows, for example, that in the United Kingdom “more than a quarter of women [prisoners] had been in care as a child”.³⁹

It is impossible to know exactly how many babies and young children are separated from their mothers worldwide, due to the imprisonment of the mother. An estimate has been made with regards to women and children in Europe. There are about 100,000 women in prison in European countries, and the Howard League for Penal

³⁶ Submission by Friends World Committee for Consultation (Quakers) to the Committee on the Rights of the Child, Day of Discussion 2005, Children Deprived of Parental Care, Quaker United Nations Office, 2005, p. 2.

³⁷ Submission by Friends World Committee for Consultation (Quakers) to the Committee on the Rights of the Child, Day of Discussion 2005, Children Deprived of Parental Care, Quaker United Nations Office, 2005, p.3, citing Human Rights Watch, *All Too Familiar: Sexual Abuse of Women in United States State Prisons*, 1996, p. 20.

³⁸ BBC News, “Support for Families of Prisoners”, 24 September 2007.

³⁹ Submission by Friends World Committee for Consultation (Quakers), *op. cit.*, p. 3, citing report by Wedderburn, D., *The Report of the Committee on Women's Imprisonment: Justice for Women: the Need for Reform* (Prison Reform Trust), 2000.

Reform, a non-governmental organization in the United Kingdom, estimates that this means that some 10,000 babies and children aged under two are affected by this situation.⁴⁰ In the United States, it was estimated that there were a quarter of a million children whose mothers were incarcerated in 1998.⁴¹

South Africa: Mothers in prison^a

A detailed inspection conducted at all female prisons in 2004/10,^b which included interviews with most female prisoners yielded the following results:

- 72 per cent of female prisoners are unmarried, 8 per cent divorced and 20 per cent are still married.
- 845 of all women in prison are mothers. 33 per cent have one child, 25 per cent have two children, 42 per cent have three or more children.
- 74 per cent of mothers reported that their children were in the care of friends or family. Only 17 per cent had children placed in formal foster care, were in children's homes or had been adopted.
- As of 31 March 2007, 168 babies (younger than 5 years) were in prisons with their mothers.^c

Afghanistan: Mothers in prison^d

- According to a study conducted by UNODC among 56 female prisoners in Kabul, Afghanistan, 78.5 per cent of the women were mothers. 43 children were living with their mothers in prison, another 107 were living with their fathers or relatives, 9 were in orphanages. 55 children were grown up and living on their own.

^aDr. Nicolien du Preez College of Law, Department of Penology, University of South Africa, personal correspondence.

^bJudicial Inspectorate of Prisons. Women in South African prisons, 2004, p. 11.

^cJudicial Inspectorate of Prisons. Annual report 2006/2007, p. 29.

^dUNODC, Female Prisoners and their social reintegration, Atabay, T., March 2007, p. 56.

According to research conducted by the Quaker United Nations Office:⁴²

- In Brazil's largest women's prison, 87 per cent of women prisoners are mothers;
- In the United States, 80 per cent of women prisoners are mothers, with three-quarters having children under 18 years of age;
- In the Russian Federation, 80 per cent of convicted women are mothers;
- In the United Kingdom, 66 per cent of women prisoners are mothers, 55 per cent have at least one child under 16 years of age, and 34 per cent were single parents before going into prison;

⁴⁰ Cited in Council of Europe, Parliamentary Assembly Recommendation 1469 (2000), adopted on 30 June 2000.

⁴¹ Women in Criminal Justice, Office of Justice Programmes, United States Department of Justice, 1998. www.ojp.usdoj.gov/reports/98Guides/wcjs98

⁴² Submission by Friends World Committee for Consultation (Quakers), op. cit., p. 1.

- In Lebanon, 49 per cent of female inmates have children under 16, including 13 per cent with children under 10 plus a further 19 per cent with children under 5 years of age;
- In Rwanda, 45 per cent of female prisoners have children under 16 years of age, including 15 per cent with children under 10 plus a further 10 per cent with children under 5 years of age.

Children outside prison are a cause of great distress to their mothers, who worry about the separation, whether the child will be taken away from them or not and how they are being cared for. If there are a number of children and they are being looked after by different persons or institutions, this will be an additional cause for concern.

Studies of prisoners' children consistently report that "children experience a range of psychosocial problems during the imprisonment of a parent, including: depression, hyperactivity, aggressive behaviour, withdrawal, regression, clinging behaviour, sleep problems, eating problems, running away, truancy, poor school grades and delinquency."⁴³ Furthermore, "parental separation can be experienced as desertion or abandonment, which can compound distress for children."⁴⁴

Nevertheless, the rights and needs of dependent children left outside prison are rarely taken into account when taking decisions to detain or sentence their mothers.

6.2 Pregnant women and women with children in prison

Pregnancy and childbirth

Pregnant women rarely receive adequate ante- and post-natal care in prison. Prison healthcare services in the large majority of countries worldwide are under-resourced and understaffed. Their capacity may be limited to trying to cope with serious health concerns in prisons, such as HIV, TB or malaria epidemics. Prisons are generally vastly overcrowded and hygiene is poor. The particular dietary requirements of pregnant women may not be considered or catered for by prison authorities, while the food provided may be insufficient to cover the nutritional requirements of pregnant women.

Particularly in low income countries the delivery of babies may be carried out in prisons, in unhygienic conditions, by staff with inadequate medical expertise, resulting in health complications.

⁴³ Women in Prison, A Review of the Conditions in Member States of the Council of Europe, The Quaker Council for European Affairs, February 2007, p. 14, citing from "Parental Imprisonment: Effects on Boys' Antisocial Behaviour and Delinquency Through the Life-Course", Murray J., and Farrington D., Institute of Criminology, University of Cambridge, Journal of Child Psychology and Psychiatry, 2005, p. 1.

⁴⁴ Ibid., p. 14, citing "The Effects of Imprisonment on Families and Children of Prisoners", Murray J., in "The Effects of Imprisonment", Liebling, A. & Maruna, S., Willan Publishing, 2005, p. 450.

Rape victims, childbirth and maternal mortality in prisons

"Health facilities are almost non-existent in women prisons. Almost all rape victims who become pregnant end up delivering while still jailed for a crime not committed. They have no access to pre-natal care, are under-nourished and over-worked in jail and ultimately end up delivering in the unhygienic prison health care facility under pathetically sub-optimal conditions. Obviously this results in a disproportionately high number of infant and maternal deaths in a country which already has a dismal infant and maternal mortality rate".^a

Dismal prison conditions and pregnant women

"The day we visited, 10 women were locked into a long narrow cell of approximately 16 by 3 feet, of which the last couple of feet were occupied by a hole-in-the-floor toilet. With a broken light bulb hanging from the ceiling, the cell had no light besides the sunlight that entered through the barred metal gate. One of the women inmates, who was five months pregnant, was complaining of sickness and pain, but the guards ignored her. She had spent the last 10 days locked in the dark crowded cell".^b

^aRafiq, S., Justice and equality for women, Pak Tribune, 12 April 2004.

^bHuman Rights Watch, Behind Bars in Brazil, 1998, Section XI, Women Prisoners, (accessed at <http://www.hrw.org/reports98/brazil/Brazil-12.htm>).

In some countries body restraints, such as shackles, are used on pregnant women during transfers to hospitals, gynaecological examinations and birth. This practice violates international standards. Moreover, shackling during labour may cause complications during delivery such as haemorrhage or decreased fetal heart rate. If a caesarian section is needed, a delay of even five minutes may result in permanent brain damage to the baby.

Pregnant women and body restraints

"[...] from time to time, the CPT encounters examples of pregnant women being shackled or otherwise restrained to beds or other items of furniture during gynaecological examinations and/or delivery. Such an approach is completely unacceptable, and could certainly be qualified as inhuman and degrading treatment. Other means of meeting security needs can and should be found."^a

^aEuropean Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 10th General Report [CPT/Inf (2000) 13], CPT Standards, para. 27.

Women with children in prison

One of the most difficult challenges involving the imprisonment of women is the question of how best to deal with women with babies. The separation of women from their children due to imprisonment has a traumatic and long term effect on the mothers and their children. Children are a life-sustaining force for many prisoners and breaking the bond between the mother and child is punishment of the worst kind for the mother. Children, often traumatized and unable to comprehend the

reasons for separation, are likely to suffer from acute emotional and developmental problems, as well as being at risk of inadequate care in under-resourced state institutions or by alternative carers.

Prisons, on the other hand, do not provide an appropriate environment for children to grow up in. Health services in prison, which are usually not geared towards children's healthcare needs, are inadequate to cope with the needs of babies and small children in a large majority of countries. Most often, children in prison cannot mix and communicate with children outside prison. Mothers are usually not allowed to spend enough time with their children. The harsh, punitive environment of prisons can permanently damage the psychological and mental wellbeing of children.

Prisons are ill-equipped to care for breastfeeding mothers and babies

"The visit to the female section by the delegation showed a very pathetic image of two out of the three breastfeeding women with their babies in a very bad state of health. Of two and three years old, these babies could not get a trace of milk in their mother's breast who like any other prisoners were under a very unbalanced diet. As a consequence the said babies spend all day longing to eat or to taste their mother's regular meal, one that is made of maize and beans. Prompt dispositions were taken by the Special Rapporteur in consultation with the police to get these remand women out, for the sake of their babies."^a

Child mortality in prisons^b

"Mortality rates rise during the summer (May-August) at the rate of 1 child per day (at time of writing 20 children were suffering from chicken pox). Also, the prisoners suffer from diseases on a regular basis due to the lack of a well nourished diet. For example, the durra and maize are of the worst quality."

^aPrisons in Malawi, 17 to 28 June 2001, Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa, Series IV, No. 9, African Commission on Human and Peoples' Rights, pp. 30 and 36. The President released the mother with two children soon after the visit of the Special Rapporteur.

^bAnnual Report on Women Prison Conditions in Sudan Omdurman women's prison, Kousti, Al Fashir, Marawi, Sudan Organisation Against Torture (SOAT), 2003 p. 6.

In the majority of countries mothers can keep their babies with them in prison up to a certain age, which differs from country to country, typically ranging from the age of one to six, but sometimes even longer. This, in effect, means that worldwide large numbers of children spend some of their most formative years in prison, probably with life-long psychological consequences.

During the separation mothers may not see their children again or they may lose track of them, sometimes due to the cost involved in arranging visits to the prison, other times due to the rejection of the mother by the relatives taking care of the children or because the custody of the child might have been taken away from the mother.

Given that a large percentage of women in prison are mothers, this means that the consequences of their imprisonment stretch well beyond the harmful effects on themselves, but encompasses many children as well, increasing the possibility of their future incarceration.

7. Post-release reintegration

All prisoners face a range of difficulties during post-release reintegration. Resources and attention allocated to their social, psychological and health needs in preparing them for release and following imprisonment are generally very inadequate. Collaboration between prison authorities and civil, social and health services is often lacking. In addition, after release former prisoners suffer from discrimination in employment and education, due to their criminal record and stigmatization.

Although many problems women face during re-entry into society are similar to that of men, the intensity and multiplicity of their post-release needs can be very different. Women are likely to suffer particular discrimination after release from prison, due to social stereotypes. They might be rejected by their families and in some countries they may lose their parental rights.

If they have left a violent relationship, women will have to establish a new life, which is likely to entail economic, social and legal difficulties, in addition to the challenges of transition to life outside prison. A study conducted in one country highlights well some of the practical difficulties women face after release from prison. In the United Kingdom, around one-third of women prisoners lose their homes whilst in prison as a direct or indirect result of imprisonment. This has a particular impact on women with children that have been taken into care. The loss of housing for women can make the task of regaining care of their children particularly difficult. If they do not have children in their care they are unlikely to be given priority status by housing authorities. However, if they do not have secure accommodation, then their children will not be placed back into their care.⁴⁵

Women are more likely than men to have received treatment for a mental health problem in prison and will be in need of continued psychiatric treatment or counselling after release.

Former prisoners experience high rates of drug-related accidents, overdose and death. The risk of renewed drug or alcohol abuse is high among all former prisoners, particularly during the early stages following release, when the myriad of difficulties associated with re-entry may lead to despair and relapse into former habits. The high rate of substance addiction among female prisoners may therefore pose a significant obstacle to successful reintegration.

In some countries women may not be able to leave prison unless they have a male guardian to collect them from prison, which might lead to their prolonged detention beyond the term of their sentence.

In some countries, women are at risk of murder by their families following release, if they have committed “moral offences”,⁴⁶ or they are victims of rape or other sexual

⁴⁵ Social Exclusion Unit, *Reducing re-offending by ex-prisoners*, London: Office of the Deputy Prime Minister, United Kingdom, 2002, pp. 138, 140.

⁴⁶ Depending on the country, a moral offence may include sex outside marriage, adultery and homosexual relations. Although not necessarily defined as such, “reproductive crimes”, such as concealment of birth, abortions, or other acts perceived or defined as infanticide, are also morality-based and can have some similar consequences for the women concerned, in terms of their relationship with their families.

abuse.⁴⁷ They may also be at risk of being returned to violent marriages or being forced to marry someone against their will. They are in need of special protection and support. In most cases, however, such protection (e.g. in safehouses) is vastly inadequate to cater for their needs. (See chapter 2, section 9, on concerns relating to protection measures.)

On release, trafficked women and women imprisoned in relation to their connection to organized crime may also face particular security concerns.

Pre-release preparation and post-release support policies and programmes are typically structured around the needs of men and rarely address the gender-specific needs of female prisoners, with targeted continuum-of-care in the community after release.

See section 11.2 for particular difficulties foreign national women face, if non-resident, or resident and liable for deportation.

⁴⁷ The killing (so-called “honour killings”) of women who have committed “moral” crimes, which often include victims of rape or sexual abuse, by the male members of the family or community is widespread in many countries, especially in the Middle East and some countries in Asia.

2.

Management of women's prisons

1. Gender-sensitive prison management

United Nations Convention on the Elimination of All Forms of Discrimination against Women

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

The United Nations Standard Minimum Rules for the Treatment of Prisoners

6. (1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Principle 5 (2)

Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

1.1 Eliminating discrimination

Prisons need to be managed within an ethical framework, guided by international standards developed to protect the human rights of prisoners and to ensure that prisoners' treatment aims to facilitate their social reintegration, as a priority.⁴⁸

These standards include the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR), Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment, Basic Principles for the Treatment of Prisoners, Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment and Code of Conduct for Law Enforcement Officials, among many other international and regional documents. They constitute the fundamental principles, which are valid in all systems and prisons worldwide, and apply to all prisoners without discrimination.

However, women prisoners are usually discriminated against, due to the fact that prisons and prison regimes are developed with the needs of the majority male prison population in mind. In addition, as mentioned earlier, due to their small numbers, women are often housed in prisons far away from their homes, which hinders the maintenance of links with their families and children, with a particularly harmful effect on their mental wellbeing and social reintegration prospects. Therefore, in practice, it is difficult to apply many rules included in SMR, unless affirmative action is taken by prison administrators in order to ensure that women prisoners have equal access to all services and rights that male prisoners enjoy. Affirmative action requires taking initiatives and allowing for special considerations, when applying SMR to female prisoners. This understanding is reflected in Principle 5(2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which makes clear that special measures to address the particular needs of women prisoners are not in themselves discriminatory.

In order to ensure compliance with the principles of non-discrimination against women and girls required by a number of international instruments, those responsible for the management of women's prisons should act not only in compliance with SMR, but should also be guided by these standards, including: The International

⁴⁸ See Coyle, A., *A Human Rights Approach to Prison Management*, International Centre for Prison Studies, 2002, for guidance.

Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Declaration on the Elimination of Violence against Women and Convention on the Rights of the Child. Reference is made to some of these instruments in this handbook, where relevant.

Among regional instruments relating to the treatment of prisoners, the European Prison Rules,⁴⁹ revised in 2006, now contain a number of rules relating to the treatment of women specifically, which have been noted in this handbook.

1.2 Different needs and management style

In addition to ensuring that women prisoners are not discriminated against in practice—e.g. in maintaining links with their families, having access to prison activities etc.—there also needs to be an understanding that women prisoners have requirements that are very different to those of men. What is still lacking in most systems is the recognition that these different needs must be reflected in the management ethos of women's prisons, with changes being made to management style, assessment and classification, programmes offered, healthcare and the treatment of women with children.

The need for a gender-sensitive approach to female prisoners has been underlined by penal reform experts in countries worldwide. For example, a national survey conducted in the United States during 1993 and 1994 pointed to the need of a different style of management for women prisoners.⁵⁰ The establishment of a gender-sensitive penal system and conducting gender-sensitivity training for law enforcement officials were key recommendations made by a Nigerian NGO in 2006.⁵¹ Studies in Russia⁵² and India⁵³ underline requirements for gender sensitivity in the management of women's prisons, and an “urgent need to rethink women's prisons without the male prison as a reference point”.⁵⁴

The following have been identified as some of the requisite ingredients for a gender-sensitive management style in women's prisons:⁵⁵

- The recognition of the different needs of women;
- A capacity and willingness by prison staff to communicate openly with prisoners and a less authoritarian manner;

⁴⁹ Recommendation Rec (2006)2 of the Council of Europe, Committee of Ministers to Member States on the European Prison Rules, Adopted by the Committee of Ministers on 11 January 2006.

⁵⁰ Morash et al., op. cit., p. 4.

⁵¹ Agomoh, U.R, Ogbozor, E.N., The State of Women Prisoners in Nigeria: Assessment of Problems and Options, PRAWA, Nigeria, Paper presented at the 11th International Conference on Penal Abolition (ICOPAXI), held in Tasmania, Australia, February 9-11 2006.

⁵² Alpern, Women and the System of Criminal Justice in Russia: 2000-2002.

⁵³ Shankardass, R.D., Roy, N. and Seshadri, V., Workshop on New Models of Accessible Justice: The India Experience (Special Focus on Women and Juveniles), National Commission for Women, Penal Reform International and Penal Reform and Justice Association, 2000, Gurgaon, India.

⁵⁴ Shankardass, R.D., “Where the Mind is Without Fear and the Head is Held High”, Mental Health and Care of Women and Children in Prison in Andhra Pradesh, p. 21.

⁵⁵ Morash et al., op. cit., p. 4.

- Skills such as active listening, patience in explaining rules and expectations;
- Awareness of emotional dynamics, and the capacity to respond firmly, fairly and consistently.

There also needs to be recognition of and corresponding provisions for the multiple needs of women who are foreign nationals or who are members of racial or ethnic minorities and indigenous peoples. (See section 11.2, foreign national women and *UNODC Handbook on Prisoners with Special Needs*, chapter on ethnic and racial minorities and indigenous peoples).

Such a management style and approach needs to complement activities and services which address the specific needs of female prisoners, relating to their mental and psychological wellbeing, care and concerns for their children, particular health and hygiene requirements, among others.

The components of gender-sensitive prison management should include:

- Taking affirmative action to counter-balance discrimination encountered by women prisoners, due to their small numbers;
- Adopting a gender-sensitive management style;
- Recognizing the different needs of female prisoners, including those from different cultural backgrounds, and providing programmes and services that address these needs.

In order to ensure that gender sensitivity becomes an integral element of the management of women's prisons, the responsibility for research, evaluation, policy formulation and implementation of policies relating to female prisoners should be the responsibility of a central department responsible for women's prisons, with female senior staff.

Measurable criteria should be developed to evaluate the success of the management of women's prisons and such evaluation should be undertaken on a regular basis, both by the prison service itself, as well as by independent bodies.

2. Staff

United Nations Convention on the Elimination of All Forms of Discrimination against Women

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

See also United Nations Standard Minimum Rules, 46-51.

The qualities of the prison director and other staff are key to the successful management of prisons. The role staff can play in establishing and maintaining a secure, safe, well ordered and humane prison, with a regime conducive to the rehabilitation of prisoners, is to a large extent more important than the material conditions of imprisonment, provided that the latter meet the basic needs of prisoners.

In many prison systems staff assigned to supervise women prisoners receive no special training to help them deal with the particular needs of women prisoners. In the male dominated, hierarchical prison environment, female prison staff may face unfair competition as well as overprotection. Often they have less authority and decision making power, and they themselves may suffer from sexual harassment and discrimination in their workplaces. Women face difficulties in achieving promotions, due to stereotypical perceptions and discrimination. Such problems are exacerbated by additional pressures most women face in combining job and family demands.

In most prison systems there is a need to ensure that capacity building of female staff comprises a key component of policy and programme development and delivery, to enable staff to address the special social reintegration requirements of female prisoners, as well as to empower female staff within the prison service. Staff assigned to supervise women prisoners should receive training relating to the gender-specific needs of female prisoners, as well as approach and style of management. Topics covered throughout this handbook should be included in their training.

Female prison staff should be employed in senior positions with key responsibility for the development of policies and strategies and delivery of programmes for female prisoners.

In order to combat discrimination and sexual harassment in the workplace, there needs to be a clear commitment at managerial level that discrimination will not be tolerated. Women staff need to be made aware of different types of sexual harassment and recognize such actions by male staff to be against international, and in most cases also national, law. Women staff should be in a position to make complaints without fear of retaliation, when such acts take place. There should be complaints procedures in place for women staff to be able to bring their situation to the

attention of senior staff, as well as of independent inspectors and other competent authorities authorized to monitor compliance with human rights standards and national law in prisons.

Female prison staff need psychological support

"Many of the women inmates and employees suffered from trauma, and generally it originated in childhood. I had fifty descriptions of childhood experiences from inmates and employees, most describing severe childhood abuse and/or abandonment...."^a

[...]

"The employees, many of them severely traumatized themselves in childhood although less so than inmates, were vulnerable to secondary traumatization by working so closely with inmates. The cumulative traumatic effect on the employees, working with no support or training and under a hostile administration, appeared to easily account for the difficulties of the employees with alcohol and drug abuse, emotional outbursts, and difficulty coming to work. It could also have accounted for much of their violence."^b

^aMorgan E., *The Violence of Women's Imprisonment, A View from the Inside*, in Cook, S. and Davies, S. (eds.), *Harsh Punishment, International Experiences of Women's Imprisonment*, Boston, 1999, p. 41.

^bIbid., pp. 41-42.

The psychosocial support needs of female staff should also be addressed, alongside those of prisoners, taking account of the reality that in many countries female staff themselves may come from similar backgrounds to those of women prisoners, with a history of violence, abuse and addictions, which under pressure of working in prisons can translate into extreme stress, emotional trauma and unprofessional behaviour. Training staff to recognize mental distress in prisoners (see section 6.4), as well as themselves, and providing specialist support, would go a long way towards ensuring that the environment in prison is less tense, more stable and safe.

Such actions targeting female staff should be complemented by training on gender sensitivity, prohibition of discrimination and sexual harassment in the workplace in the training of male staff.

3. Assessment and classification

United Nations Standards Minimum Rules for the Treatment of Prisoners

63. (1) The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups; it is therefore desirable that such groups should be distributed in separate institutions suitable for the treatment of each group.

(2) These institutions need not provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open institutions, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners.

(3) It is desirable that the number of prisoners in closed institutions should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such institutions should not exceed five hundred. In open institutions the population should be as small as possible.

(4) On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided.

67. The purposes of classification shall be:

(a) To separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence;

(b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.

68. So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners.

69. As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions.

The security measures to which prisoners are subject should be the minimum necessary to achieve their secure custody.

However, once again women are often discriminated against in the application of this principle, due to one or a combination of the following factors:

- Due to the limited accommodation available for female prisoners, in a number of countries they are housed in security levels not justified by their risk assessment undertaken on admission.
- Since the same classification instruments are used for women and men in the vast majority of prisons worldwide, despite women's different needs and circumstances, discussed in chapter 1, information about a history of domestic violence, sexual abuse, and parental responsibility are areas in which screening is lacking for women. As a result, classification and screening procedures do not provide essential information about the women, which may increase the probability of their placement in a higher security level than appropriate, while reducing possibilities of providing suitable prisoner programmes, matching individual needs.
- A further problem is that "needs" are often assessed as risk factors during assessments, which can mean that prisoners with mental disabilities may be seen as requiring a higher level of security,⁵⁶ rather than the opposite. Such misclassification affects women more so than men due to the higher level of mental health problems among female offenders. High security levels are inappropriate for the housing of prisoners with mental disabilities and will almost invariably further exacerbate existing mental healthcare needs. (See sections 6.2 and 6.4.)

⁵⁶ Women in prison: a commentary on the Standard Minimum Rules for the Treatment of Prisoners, op. cit., p. 13.

Overclassification of women prisoners

In a women's prison with 4,000 prisoners, all were classified as high risk, even though the prison director said that only six prisoners actually met the criteria.^a

^aNicholas McGeorge, Friends World Committee for Consultation, personal communication following a visit to Lard Yao Prison, Bangkok, Thailand, April 2005.

GOOD PRACTICE

Russian Federation

Since 2004, due to amendments to the criminal code, women prisoners no longer serve sentences in high security regimes.^a

^aWomen in Prison, A Review of the Conditions in Member States of the Council of Europe, The Quaker Council for European Affairs, February 2007, Part 2, Country Report: The Russian Federation.

Prison administrators can increase the success rate of the social reintegration of female prisoners significantly by introducing classification methods and tools that address gender-specific needs and circumstances.

The gender-sensitive risk assessment and classification of prisoners should:

- Take into account the very low risk most women prisoners pose to others and the particularly harmful effects high security measures and increased levels of isolation can have on them;
- Enable essential information about women's backgrounds, such as violence they may have experienced, history of mental disabilities and drug abuse, as well as parental and other caring responsibilities to be taken into account in the allocation and sentence planning process;
- Ensure that women's sentence plans include programmes, which match their gender-specific needs;
- Ensure that those with mental healthcare needs are housed in the least restrictive accommodation and receive appropriate treatment, rather than being placed in higher security levels, purely due to their mental health problems.

An additional consideration at the time of admission should be the careful recording of the number and personal details of the children of women being admitted to prison, which should include their names, ages and, if not accompanying the mother, their location. This information will be valuable in assisting with contact between the mother and child living outside prison if required, as well as in gathering data about the parental status of women in prison, with a view to increasing knowledge about the situation of female prisoners who are mothers and improving the suitability and effectiveness of criminal justice responses to female offenders, while taking account of the best interests of their children.

4. Safety and security

United Nations Declaration on the Elimination of Violence against Women

Article 2

Violence against women shall be understood to encompass, but not be limited to, the following:

[...]

(c) physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Article 4

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

[...]

(f) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;

Convention against torture and other cruel, inhuman or degrading treatment or punishment

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

United Nations Standards Minimum Rules for the Treatment of Prisoners

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;

[...]

(d) Young prisoners shall be kept separate from adults.

53. (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

It is now generally acknowledged that safety and security in prisons depend on creating a positive climate which encourages the cooperation of prisoners. External security (preventing escapes) and internal safety (preventing disorder) are best ensured by building positive relationships between prisoners and staff. This is the essence of dynamic security, which should be employed both in men's and women's prisons.

The concept of dynamic security includes:

- Developing positive relationships with prisoners
- Diverting prisoners' energy into constructive work and activity
- Providing a decent and balanced regime with individualized programmes for prisoners

An emphasis on dynamic security in women's prisons is especially suitable to the needs of female prisoners, due to the particularly harmful effects high security measures can have on women to the detriment of their mental wellbeing and social reintegration prospects. Creating a positive climate in prisons and using disciplinary measures only when strictly necessary should comprise essential components of a gender-sensitive approach to prison management.

Another fundamental requirement is to take account of women's special protection needs in prisons, as a safe environment is what women in prison need above all else. Under international law, the rape of a woman in custody by an agent of the State may constitute torture for which the State is held directly responsible. Other forms of sexual abuse or serious physical abuse committed against women, such as the deliberate use of intimate searching, groping and threats, also amount to torture or ill-treatment if carried out by an agent of the State. States are responsible for protecting women from all forms of sexual abuse and violence in prisons, and ensuring that perpetrators of such acts are brought to justice.

One of the first steps to ensure women's safety is to introduce a gender-sensitive screening procedure and classification system, as mentioned in section 3. A careful differentiation of women, based on the risk they pose to themselves and others is an essential component of the classification on entry to prison.

4.1 Separation and supervision of women

The United Nations Standard Minimum Rules for the Treatment of Prisoners is very clear that, as a matter of principle, women deprived of their liberty should be held in accommodation which is physically separate from that of male prisoners, in order to protect them against sexual harassment and abuse.

In order to protect young girls in prison from sexual and other forms of abuse from older prisoners, girl prisoners should be separated from adult women. (See also section 11.3, "girls in prison".)

There should also be recognition of the fact that older women may be intimidated and threatened by younger women, while they themselves may abuse younger women housed in adult prisons. Thus, particularly in prison systems where dormitory accommodation is provided, a differentiation by age, as well as on the basis of risk assessments, is likely to be beneficial in minimizing such risks.

In some countries there has been a move towards limited contact between men and women prisoners, following careful selection and subject to close supervision. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has noted that, “some States have begun to make arrangements for couples (both of whom are deprived of their liberty) to be accommodated together, and/or for some degree of mixed gender association in prisons. The CPT welcomes such progressive arrangements, provided that the prisoners involved agree to participate, and are carefully selected and adequately supervised”.⁵⁷ Such arrangements may bring some normality to prison life and enable female prisoners to participate in a larger variety of prisoner programmes. They must never be made, however, without the consent of the female prisoners concerned, and unless the prison administration is in a position to undertake the requisite selection and supervision of prisoners to guarantee their safety.

Another key principle which aims to prevent the sexual abuse of women prisoners is reflected in the rule that female staff must supervise women prisoners, with male staff being allowed to enter the prison establishment only when strictly necessary and only in the presence of female staff (SMR, Rule 53).

Specialist staff, such as male medical staff and teachers should not be prevented from carrying out their duties, however, in line with rules and procedures set out in legislation and regulations and subject to adequate safeguards being in place to prevent any abuse.

It should also be noted that female staff may also be responsible for the abuse, including sexual abuse, of women prisoners, and measures taken for the protection of female prisoners should take account of this risk. In systems where female staff are subordinated to male staff (whatever their official rank), where adequate safeguards are not in place and/or where corruption is rife, women staff may also facilitate or will not prevent male staff's entrance into women's detention centres or prisons for the purposes of sexual abuse, which underlines the vital importance of the need for capacity building, training, psychosocial support to staff, highlighted in section 2, “staff”.

There should be clear policies and guidelines in place relating to use of force, violence and sexual misconduct by staff in prisons, aiming to provide maximum protection to women prisoners. All forms of violence, sexual intercourse with prisoners and sexual touching should be criminalized to prevent rape and other forms of abuse. Prison officers should be obliged to report instances of abuse or sexual misconduct perpetrated by other staff. Retaliation by staff against other staff who complain of

⁵⁷ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT Standards (2006), Extract from the 10th General Report [CPT/Inf (2000) 13], para. 24.

such acts should be prevented, for example, by vigorous monitoring, disciplinary measures and independent investigations, as relevant.

Staff should receive training in the area of sexual misconduct and be sensitized in gender issues.

These steps are vital in all cases, but especially in States which apply a policy of mixed gender staffing.

Mixed gender staffing

Concerns relating to mixed gender staffing in women's prisons have been mentioned in chapter 1, section 4. In at least one country which has a policy of mixed gender staffing, it has been asserted that the employment and career opportunities of female staff would be curtailed if the United Nations Standard Minimum Rules, Rule 53 were to be applied since there are only a small number of women's prisons.⁵⁸ However, since prison rape and sexual abuse is almost exclusively carried out by men there is a need to consider whether allowing women to work in men's prisons should automatically mean that male staff should also be allowed to supervise female prisoners. The employment of women in men's prisons has its advantages in terms of creating employment opportunities for woman staff, in changing the male dominated culture of the prison system and, as asserted by many prison experts, having a calming and positive effect on men. The employment of men in women's prisons however, carries particular risks that outweigh any advantages. Positive discrimination for female prison staff in this case would be a much preferred option, providing employment opportunities for them in men's prisons, but not vice versa.

In a small number of countries mixed gender staffing in women's prisons has been proven to bring benefits by normalizing prison life. But it must be recognized that such an approach relies heavily on a sufficient number of staff with adequate training (including in gender sensitivity), the existence of, and strict enforcement of safeguards, rules and procedures, the effectiveness of confidential complaints mechanisms and the existence of independent inspections. In systems where human rights violations in prisons are prevalent, where safeguards are not applied, where human and financial resource restrictions hinder the adequate training of staff, and a culture of discrimination and violence against women may be prevalent in society, the risks of such a policy are very high, with possible devastating consequences for the prisoners.

United Nations Standard Minimum Rules are very clear on this issue. But if male staff are, nevertheless, allowed to work in women's prisons, they should never be

⁵⁸ See Report of the Special Rapporteur on violence against women, its causes and consequences, Ms Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1997/44, Addendum, Report of the mission to the United States of America on the issue of violence against women in state and federal prisons, UN Document, E/CN.4/1999/68/Add.2, 4 January 1999, para. 56. The United Nations Human Rights Committee has also expressed concern about male prison officers guarding women in US prisons. / Official Records of the General Assembly, Fiftieth Session, Supplement No. 40 (A/50/40), vol. I, paras. 285, 299.

employed in contact positions, responsible for the direct supervision of prisoners. They should not be allowed access to private areas, such as dormitories and sanitary areas or be placed in a position where they can observe these areas. Strict procedures and safeguards should be in place to protect women from any intimidation, abuse and violence.

Female prisoners in transit

Female prisoners are at particular risk of abuse by staff during prison transfers and transfers between pre-trial detention facilities and courts. Adequate safeguards should be in place to protect women during this time and they should be escorted by a female staff member, or more than one, depending on the number of women being transferred.

4.2 Prisoner complaints

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

United Nations Standard Minimum Rules for the Treatment of Prisoners

Information to and complaints by prisoners

36. (1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.

(2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.

(3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.

(4) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

It is of utmost importance that women who have been subjected to any form of abuse in pre-trial detention or prison should be able to complain without fear of retaliation by staff, confidentially, to the central prison administration, judicial authorities and independent inspectors. Clear mechanisms should be in place to enable complaints to be submitted without delay to the relevant authorities and female prisoners should be informed about their right to complain by prison staff, as well as receiving written information about rules and procedures relating to complaints. The competent authorities should act on such complaints swiftly and impartially, conduct a thorough investigation of the alleged acts and bring perpetrators to justice. Investigations of such complaints should be undertaken by independent bodies.

Women who claim to have been abused should be provided immediate protection and supervision, while their claims are investigated, and later on, if required. Complete isolation is not recommended as segregation is likely to be experienced as punitive and increases the risk of self-harm and suicide. In addition, segregation does not necessarily provide protection. Women in isolation may be abused by prison guards or other prisoners with the complicity of prison guards. Safeguards should be in place to prevent any retaliation by prison staff.

4.3 Prisoner searches

United Nations Human Rights Committee, General Comment

Article 17 of the International Covenant on Civil and Political Rights guarantees all persons' right to privacy. The Human Rights Committee, in its General Comment 16 on article 17 stated that "[s]o far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex" (see HRI/GEN/1/Rev.3, part I).

European Prison Rules, 2006

- 54.4 Persons being searched shall not be humiliated by the searching process.
- 54.5 Persons shall only be searched by staff of the same gender.
- 54.6 There shall be no internal physical searches of prisoners' bodies by prison staff.
- 54.7 An intimate examination related to a search may be conducted by a medical practitioner only.

Statement on Body Searches of Prisoners, World Medical Association^a

[...]. The purpose of the search is primarily security and/or to prevent contraband, such as weapons or drugs, from entering the prison. These searches are performed for security reasons and not for medical reasons. Nevertheless, they should not be done by anyone other than a person with appropriate medical training. This non-medical act may be performed by a physician to protect the prisoner from the harm that might result from a search by a non-medically trained examiner. In such a case the physician should explain this to the prisoner. The physician should furthermore explain to the prisoner that the usual conditions of medical confidentiality do not apply during this imposed procedure and that the results of the search will be revealed to the authorities. If a physician is duly mandated by an authority and agrees to perform a body cavity search on a prisoner, the authority should be duly informed that it is necessary for this procedure to be done in a humane manner.

^aAdopted by the 45th World Medical Assembly, Budapest, Hungary, October 1993 and editorially revised at the 170th Council Session, Divonne-les-Bains, France, May 2005. (<http://www.wma.net/e/policy/b5.htm>)

If the search is conducted by a physician, it should not be done by the physician who will also subsequently provide medical care to the prisoner.

The physician's obligation to provide medical care to the prisoner should not be compromised by an obligation to participate in the prison's security system. [...]

Individual prisoners, particularly those subject to medium or maximum security restrictions, may have to be personally searched on a regular basis to make sure that they are not carrying items which can be used in escape attempts or to injure other people or themselves, or items which are not allowed, such as illegal drugs. The intensity of such searches will vary according to circumstances.

Male members of staff should never be involved in the personal searches of female prisoners, such as pat down and frisk searches. All searches of women should be carried out by female staff.

If, in exceptional circumstances, intimate body searches are required, they should only be carried out by an external medical practitioner (a female practitioner, if preferred by the prisoner) in a private room. A female member of staff should supervise the process. No prisoner—regardless of gender—should be humiliated and be required to strip completely during a search. Special sensitivity should be demonstrated in the case of women, however, since they are likely to feel the humiliation of undergoing intimate searches particularly. The experience may be extremely distressing and traumatizing if they have been victims of sexual abuse in the past. Internal searches of women should only be undertaken if there is a genuine justification.

The World Medical Association has made clear that such searches need medical knowledge in order to ensure that the person being searched is not harmed, but has emphasized that the physician carrying out the search should not be the prison physician—i.e. the same person who will later be caring for the prisoner concerned—as this compromises the prison medical practitioner's role and impartial position.

GOOD PRACTICE

International instruments recommend there should be a detailed set of procedures, which staff should follow when carrying out personal searches.

These procedures:

- should clearly define the circumstances in which such searches are allowed;
- should ensure that prisoners are not humiliated by the searching process, for example, by having to be completely naked at any time;
- should stipulate that prisoners should be searched by staff of the same gender and be out of view of staff of the opposite gender;
- should prohibit security staff from carrying out internal searches of a prisoner's body. Such searches should be carried out by an outside medical practitioner—of the same sex if the prisoner so wishes—and only when genuinely justified.

It is desirable that intimate body searches are removed altogether, as they undermine the personal dignity of prisoners and are invariably very distressing, if not traumatizing, experiences. In many cases it may be sufficient to keep a prisoner under close surveillance and wait for any suspected illicit object to be naturally expelled, as suggested by WHO.⁵⁹ Alternative screening methods, such as scans may also be introduced.⁶⁰

World Medical Association Statement on Body Searches, 1993, 2005

[...]

The World Medical Association urges all governments and public officials with responsibility for public safety to recognize that such invasive search procedures are serious assaults on a person's privacy and dignity, and they also carry some risk of physical and psychological injury. Therefore, the World Medical Association exhorts that, to the extent feasible without compromising public security,

- alternate methods be used for routine screening of prisoners, and body cavity searches be used only as a last resort;

[...]

Finally, the World Medical Association urges all governments and responsible public officials to provide body searches that are performed by a qualified physician whenever warranted by the individual's physical condition. A specific request by a prisoner for a physician shall be respected, so far as possible.

Staff should also demonstrate sensitivity when searching the infants of mothers in prison and children visiting female prisoners. During the searching of personal belongings of infants and children (such as underwear, baby food, feeding bottles, diapers, etc.) care should be taken to cause minimal distress to the child and mother and to act in compliance with hygiene rules. In some systems women prisoners have given up receiving visits from their children due to the extreme anxiety caused by their searching.

4.4 Body restraints

United Nation Standard Minimum Rules for the Treatment of Prisoners

33. Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;

⁵⁹ Möller, L., Stöver H., Jürgens R., Gatherer, A. and Nikogasian, H., (eds.), *Health in Prisons, A WHO Guide to the essentials in prison health*, WHO Europe, 2007, p. 36.

⁶⁰ See commentary, *European Prison Rules*, Rule 54, where attention is drawn to the WMA Statement on Body Searches, adding that, Rule 54.6 does not preclude the possibility of using modern technology to scan a prisoner's body.

(b) On medical grounds by direction of the medical officer;

(c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

34. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.

Instruments of restraint should always be used as a last measure and for the shortest possible period of time in the case of all prisoners, without distinction. They should never be used as punishment. The use of irons and chains is prohibited at all times. The use of restraints on pregnant women during medical examinations, transport to hospital to give birth and during birth is unacceptable. Other means of security should be used during medical examinations, transport and birth.

4.5 Disciplinary segregation

United Nation Standard Minimum Rules for the Treatment of Prisoners

27. Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.

[...]

31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

32. (1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.

(2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.

(3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

Disciplinary segregation/solitary confinement should always be used as a last resort for all prisoners and for the shortest possible period of time. Prison administrators should demonstrate sensitivity to the distress caused by isolation on female prisoners, the particular risk of self-harm and suicide among women, and use this measure only in exceptional circumstances.

Using disciplinary segregation as a punishment for attempted suicide or self-harm, apparently as a means of protection, is unacceptable. Other means of protection and treatment, under the supervision of a mental health specialist should be employed in such cases. (See also section 6.7, “suicide and self-harm prevention”.)

For the use of disciplinary segregation and restraints on prisoners with mental disabilities, see *UNODC Handbook on Prisoners with Special Needs*, chapter on “prisoners with mental healthcare needs”).

5. Prisoner activities and programmes

United Nations Convention on the Elimination of All Forms of Discrimination against Women

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

[...]

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

[...]

United Nations Standard Minimum Rules for the Treatment of Prisoners

Work

71. (1) Prison labour must not be of an afflictive nature.

(2) All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.

(3) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.

(4) So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.

(5) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.

(6) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.

[...]

76. (1) There shall be a system of equitable remuneration of the work of prisoners.

(2) Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.

(3) The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release.

Education and recreation

77. (1) Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.

(2) So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

78. Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.

5.1 Work and vocational training

The type and quality of prisoner activities and programmes, and the level of prisoners' access to them, underpin the success of social reintegration efforts in prisons. Activities provided for prisoners should enable them to live law abiding lives after release, by increasing their job skills and improving their education, especially. Research indicates that steady employment following release is one of the most important factors that prevent recidivism, together with strong family ties and support.

Female prisoners, typically from marginalized and disadvantaged sectors of society, are likely to have suffered particularly from discrimination prior to imprisonment. They are less likely to have been employed than men at the time of imprisonment. In a majority of cases they commit an offence due to poverty. Many are unable to end violent relationships due to the lack of economic freedom. By providing women with adequate and equal opportunities for vocational training in prisons, and thereby assisting them to gain employment after release, prison authorities can make an immense contribution to the social reintegration of women prisoners.

Nevertheless, female prisoners are often discriminated against in the area of work and vocational training. Women housed in the annexes of male prisons may be given little or no access to activities, due to their small numbers. The lack of childcare facilities/nurseries in prisons may also hinder women with small children from participating in prison activities.

Programmes that women may have access to typically comprise activities deemed suitable for the female gender, such as sewing and cleaning. This means that prisons continue to impose role models on women which exist in society, thereby failing to help them overcome the restrictions imposed by stereotypical perceptions. Nevertheless, account should also be taken of the fact that in some societies it may be difficult for women to find jobs in fields which are perceived as male occupations only. Therefore, there is a need to maintain a balance between the different types of vocational training offered. The training and work provided should correspond to market demands and aim to increase women's real chances of earning a living wage after release.

Possible areas of vocational training for female prisoners could include:

Administrative skills, bookkeeping, computer skills, painting and decorating, electro-technology, cooking/catering, horticulture, hairdressing, gardening, women's health, childcare, dressmaking, embroidery, managing income, generating community projects and the use of micro-credit facilities.

Possible ways of compensating for the lack of training staff and resources:

- Where separate workshops cannot be provided for women prisoners living in the annexes of men's prisons, prison administrations may arrange a rotation system enabling women to benefit from workshops provided for male prisoners, at separate times to men. Female members of staff should supervise any activities undertaken in the male section of the prison to ensure the safety of the women at all times.
- Selected groups of prisoners, with requisite vocational skills may run skills training programmes, ideally following a training of trainers, conducted, for example, by NGOs. This activity will: (a) provide more women prisoners with job skills; (b) improve the confidence of those who are trained as trainers and undertake the training; (c) develop peer group support among prisoners.
- Prison authorities may develop partnerships with outside services and NGOs to improve vocational training provided to women in prison, while enabling them to establish links with organizations that can assist them on release. Contact with outside organizations and services will bring additional benefits to all prisoners, and especially women, who suffer particularly from isolation. A policy of cooperation between prison administrations and organizations and services of civil society is recommended by the United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 80.

GOOD PRACTICE**NGO support to female prisoners in the United Kingdom**

An NGO in the United Kingdom, Women in Prison, visits all women's prisons to hold surgeries on education, training and employment issues. Targeted one-to-one packages of support are available to women who want to access college, voluntary work or employment after release. Support can include arrangement of voluntary work placements, job search and interview advice, accredited training on email and the internet.^a

^aWomen in Prison website: www.womeninprison.org.uk.

5.2 Education

Due to the role models society imposes on women or due to discriminatory traditional customs, in many cultures young girls are not given equal access to education. As a result, the majority of women prisoners worldwide, and especially those in low-income countries, are likely to have minimal education or to be illiterate. Education is an important means of helping women gain self-confidence and independence. Prisons may be the first chance for such women to learn how to read and write, or to receive basic education. Education will not only improve these women's life and job skills, but will also help them overcome low self-esteem, which is prevalent in many victims of violence, especially if such violence has been systematic.

Prison authorities should ensure that suitable education is provided to female prisoners as a matter of priority. In all circumstances, but especially where resources and possibilities are scarce, cooperation with education services in the community and NGOs should be sought.

Where resources are inadequate, peer education, by selected prisoners with the requisite education levels, may be considered, at least to run literacy and basic education classes.

GOOD PRACTICE**NGO Support to Female Prisoners in Nigeria**

Prisoners Rehabilitation and Welfare Action (PRAWA) conducts weekly literacy and support circle programmes in the Female Prison Kirikiri Lagos to encourage confidence building, self-esteem, and improved communication skills amongst female prisoners. Alternatives to violence training workshops and training in life planning skills are also conducted for ex-prisoners and others in the community by PRAWA. Community based dress and soap-making workshops are available for female prisoners in Lagos and Enugu by PRAWA, and a knitting workshop for female ex-prisoners is provided by the Society for the Welfare of Women Prisoners (SWEWP) in Enugu.^a

^aHuman Rights and Vulnerable Prisoners, PRI Training Manual, No. 1, p. 76.

NGO Support to Female Prisoners in Afghanistan

Afghan Women's Education Centre (AWEC) provides education and vocational training to women prisoners in Pul-e Charki Prison, Kabul. Classes, which are held five days a week, include Basic Health Education, Literacy Classes, First Aid, Handicrafts and Tailoring. AWEC also conducts monthly workshops on a variety of subjects, such as gender issues, human rights, violence against women, women's rights and Islam, civil rights of women, HIV/AIDS prevention measures. It also organizes family visits and monitors the situation of prisoner children placed in orphanages or with relatives.^b

^bUNODC, Afghanistan, Female Prisoners and their Social Reintegration, op. cit., pp. 36-38.

5.3 Special programmes

United Nations Standard Minimum Rules for the Treatment of Prisoners

58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

59. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.

European Prison Rules, 2006

25.4 Particular attention shall be paid to the needs of prisoners who have experienced physical, mental or sexual abuse.

34.2 Particular efforts shall be made to give access to special services for women prisoners who have needs as referred to in Rule 25.4.

The requirement included in SMR to apply individual treatment according to the needs of prisoners, implies that programmes should be available in prisons designed specifically for women prisoners, aiming to address the underlying factors that led to their offence and to cope with their gender-specific difficulties faced as women in prison. This requirement is highlighted in the European Prison Rules adopted in 2006.

Such programmes may include:

- Psychosocial support, therapeutic programmes, self-help groups and consultation dealing with substance abuse, mental health, history of abuse and domestic violence.
- Parenting programmes, including child visitation programmes and parent education;
- Programmes to build confidence and life skills.

In one study ingredients considered essential for success were cited as:⁶¹

- Staff characteristics,
- Comprehensiveness in approach,
- Pertinence to women's own interests,
- Opportunity for participants to form supportive networks with female peers,
- The individualized structure responding to multiple gender-specific experiences, including victimization and negative relationships with men,
- Parenting,
- A safe environment was considered to be critical for women with histories of abuse.

The positive influence of peer support, including via courses and self-help groups run by prisoners, has been underlined particularly by research on women prisoners, and especially in relation to victims of domestic violence. Therefore, prisoners who have completed certain programmes themselves should be encouraged to work alongside specialist staff running gender-specific programmes for women. They may also be encouraged to establish their own self-help groups, under supervision of specialist staff. Therapeutic and educational programmes targeting women prisoners who have a history of violence and abuse will not only help them overcome the devastating effects of the abuse itself, but will also improve their relationship with other prisoners and staff, while vastly improving their chances of successful transition to life outside prison on release.

Prison administrations should make every effort to involve local civil agencies and non-governmental organizations in providing activities for women prisoners.

5.4 Physical education and sports

Women often have less access than men to sports facilities in prisons. Engaging in physical activities and, where possible, training in sports are simple and effective ways of preventing the development of psychosocial disabilities such as depression, while maintaining physical health and encouraging team work.

Prison authorities should make every effort to provide women with equal access to sports as men.

- When women are housed in the annexes of men's prisons, where possible a separate gym for female prisoners should be established.
- If resource restrictions hinder this course of action, then a rotation system may be applied, allowing female and male prisoners to use the sports facilities at separate times. Mixed gender association during sports activities may also

⁶¹ Morash et al., op. cit., pp. 8-9.

be considered, provided that the prisoners are willing and adequate supervision is provided to avoid any safety risks.

- Where sports facilities are not available, due to resource constraints, gardens and yards should be used to the maximum possible extent to enable prisoners to take exercise.
- Cooperation with sports clubs and community sports services, which may provide training and sports equipment, could be a way of reducing resource pressures and establishing constructive links between civil society and prisoners.

Please see also section 11.2, “foreign national women” and *UNODC Handbook on Prisoners with Special Needs*, for guidance on prison activities and programmes in the case of foreign national prisoners and ethnic and racial minorities and indigenous peoples.

6. Healthcare

6.1 Healthy prison environment

Prisoners’ right to health is a fundamental human right recognized by numerous international instruments. The right to health encompasses the right to proper health-care, equivalent to that in the community, as well as the underlying right to live in an environment which does not generate disease and mental disabilities.⁶² In all cases, prison health policies should ensure that prison conditions and services are designed to protect the health of all prisoners. They should recognize that providing the underlying determinants of health, such as adequate space, nutrition, clean drinking water, sanitation, heating, fresh air, natural and artificial light, is key to the protection of the physical and mental well-being of all prisoners. The provision of purposeful activities and mental stimulation, as well as contact with the outside world, is also vital in this context.

By providing a healthy and positive prison environment, prison authorities may prevent many health conditions from arising or deteriorating, thereby making savings on medical costs.

⁶² See United Nations Commission on Human Rights (2005), Report of the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, United Nations document E/CN.4/2005/51, para. 45, which states “[a]s well as an entitlement to health care, the right to health includes an entitlement to the underlying determinants of health, including adequate sanitation, safe water and adequate food and shelter”.

International Covenant on Economic, Social and Cultural Rights, Article 12

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Basic Principles for the Treatment of Prisoners

Principle 9

Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

Principle 24

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

United Nations Convention Against All Forms of Discrimination against Women, Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

[...]

United Nations Standard Minimum Rules for the Treatment of Prisoners

24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

25. (1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.

(2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

52. (1) In institutions which are large enough to require the services of one or more full-time medical officers, at least one of them shall reside on the premises of the institution or in its immediate vicinity.

(2) In other institutions the medical officer shall visit daily and shall reside near enough to be able to attend without delay in cases of urgency.

6.2 Medical screening on entry

It is vital that all prisoners undergo a medical examination and health screen on entry, on an individual basis. This is important *(a)* to ensure that the prisoner starts receiving proper treatment for any health conditions immediately; *(b)* to identify any signs of ill-treatment in previous detention/custody and take appropriate action.

For many women in low-income countries the health screening on entry to prison might constitute their first medical examination. It is therefore of particular importance to diagnose any existing health conditions from the beginning of their imprisonment and provide treatment, in order to prevent the deterioration of medical problems during imprisonment. As with all medical examinations in the community, detention and prisons, it is vital that on entry medical screening should be confidential.

The cases of women who are diagnosed to have suffered from sexual abuse or other forms of violence during prior detention should be referred immediately to the competent judicial authority for investigation, and prison authorities should help such women in accessing legal counsel and provide them with specialized psychological support. The victim's informed consent should be sought to any steps to be taken by the authorities, by carefully explaining all procedures.

It is essential that on-entry screening should include an examination of the prisoner's mental health. Those with mental health problems should be identified and channelled into the least restrictive housing and receive appropriate treatment from the outset of their imprisonment. (See section 6.4, "mental health and care".) Risk of suicide and self-harm should also form an essential element of the assessments on admission, and suitable support, counselling and treatment should be provided to women at risk. (See section 6.7, "suicide and self-harm prevention".)

The initial medical screening should also cover screening for STDs, which are prevalent among women prisoners, as discussed in chapter 1, section 3, and appropriate treatment provided. Depending on risk factors, prisoners may also be offered voluntary testing for HIV, with pre- and, if necessary, post-test counselling, but it is essential that informed consent is sought and secured non-coercively before HIV/AIDS testing or medical interventions are provided to prisoners and that the process of securing consent specifically allows prisoners to refuse such testing and treatments.⁶³

The medical examination should record the reproductive health history of the prisoner, including recent pregnancies, childbirth, abortions and any related reproductive health complications, and ensure that appropriate treatment and care is provided from the outset of imprisonment. (See section 10, for the special healthcare needs of pregnant women and nursing mothers.)

If the prisoner is accompanied by a child, he or she should also undergo a health screening, ideally by a child health specialist, to determine any treatment needs. Suitable healthcare, equivalent to that in the community, should be provided in prison.

⁶³UNODC, WHO, UNAIDS, HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings, A Framework for an Effective National Response, Lines, R. and Stöver, H., 2006, p. 19. See also Council of Europe, Committee of Ministers Recommendation No. R (93) 6, Concerning Prison and Criminological Aspects of the Control of Transmissible Diseases Including AIDS Related Health Problems in Prison, Rule 3 and CPT 3rd General Report, CPT/INF (93) 12, para. 55.

6.3 Gender-specific healthcare

Women's prisons require a gender-specific framework for healthcare which emphasizes reproductive and sexual health, mental healthcare, treatment for substance abuse and counselling victims of physical and sexual abuse.

Collaboration between prison and civil health services should be an integral component of medical care provided in all prisons.⁶⁴ Primary health care should be accessible to all prisoners (men and women) according to their needs. Primary healthcare teams should be able to recognize and treat a range of chronic conditions, including disorders of the reproductive system of women.⁶⁵ Prisoners requiring specialist care should be referred to specialist healthcare providers and regular visits from civil healthcare professionals to prisons should be arranged. Specialists in women's healthcare should be available for ongoing consultation, with arrangements in place for regular visits by gynaecologists.

Wherever possible, women should receive medical treatment from women nurses and doctors. If a female prisoner requests that she be examined or treated by a female physician or nurse, a female physician or nurse should be invited to the prison establishment, to the extent they are available, except for situations requiring urgent medical intervention. The prisoner's preferences should also be taken into consideration in the medical establishment she is referred to. If these are not possible, there must be a female supervisor during her examination in line with the prisoner's request. The prisoner should not be obliged to explain the reasons for her preference.

Medical confidentiality is essential with respect to all prisoners, and this rule should be upheld during medical examinations, which means that staff should not be present during such examinations, unless exceptional circumstances exist and the doctor specifically requests a member of staff to be present. If it is absolutely necessary for prison staff to be present during medical examinations, women prisoners should never have to see a doctor in the presence of male staff.

6.4 Mental health and care

Mental health is a positive sense of wellbeing, rather than just an absence of mental disability. In all cases, the emphasis of prison mental healthcare should be on promoting the mental wellbeing of all prisoners. As the WHO Consensus Statement on Mental Health Promotion in Prisons underlines, "[w]hile it may be difficult to contemplate the existence of positive mental health among prisoners, prisons should provide an opportunity for prisoners to be helped towards a sense of the opportunities available to them for personal development, without harming themselves or others".⁶⁶ A comprehensive programme aiming to promote mental health in prisons, should include the provision of a varied and balanced prison regime, including access to education, vocational training, recreation, family contact, physical exercise, a balanced

⁶⁴ See WHO Europe, Declaration: Prison Health as part of Public Health, Moscow, 24 October 2003, where delegates noted that penitentiary health must be an integral part of the public health system of any country and put forward a set of recommendations to improve healthcare services in prisons, based on this principle.

⁶⁵ A WHO Guide to the essentials in prison health, WHO Europe, 2007, op. cit., pp. 24-27.

⁶⁶ WHO Regional Office for Europe Health in Prisons Project, Consensus Statement on Mental Health Promotion in Prisons, 1998, para. 3.

diet, opportunities to participate in arts, among others.⁶⁷ Counselling and therapy should be offered as early as possible to those who appear to be at risk of developing mental disabilities.

Due to the prevalence of mental healthcare needs among female offenders, the provision of adequate, gender-sensitive and interdisciplinary mental healthcare should comprise an essential component of their rehabilitation programme. Women's unique mental healthcare and psychological support needs should be recognized, including, among others, of those who demonstrate acute distress and depression due to isolation, separation from children, families and communities. Treatment should be individualized and aim to address the reasons that provoke distress or depression, as well as psychiatric problems, based on an integrated approach of counselling, psychosocial support and medication, if necessary. Medication should be used only when strictly necessary, in response to individual needs, rather than as a matter of routine, which is the case in many prison systems.

GOOD PRACTICE

Mental Health and Care of Women and Children in Prison in Andhra Pradesh, India

The NGO, Penal Reform and Justice Association (PRAJA) implemented a one year project in 2000-2001 in two women's prisons in Andhra Pradesh, with support from Penal Reform International (PRI). The aim of the project was to address the problem of the lack of adequate and organized information about women and children in prison; to analyse professionally the effects of incarceration on women and children in prison, particularly on their mental health and personal development; to suggest constructive programmes and better prison practices in women's prisons and to explore alternatives to prison for women offenders.^a Selected social workers (who later became counsellors) worked on the project under supervision of PRAJA and PRI over a period of one year to fulfil the above objectives. One of the findings of the project was that "ideas about the mental health needs of women generally and the needs of women in prison needed a radical review and update. The intellectual nourishment of those who were regarded as specialists in the field seemed in need of revision, to be based on the circumstances and reality that surrounded women's lives rather than on clinical (medical) causative factors constructed by the specialists".^b The project suggested that any focus on planning women's mental health (particularly in India) had to go beyond the clinical, epidemiological "illness areas" model and into the "distress areas" model that would cover women's overall social experiences of everyday living.^c

^aShankardass, R. D., *Where the Mind is Without Fear and the Head is Held High, Mental Health and Care of Women and Children in Prison in Andhra Pradesh*, PRAJA, PRI, 2001, p. 16.

^b*Ibid.*, p. 21.

^c*Ibid.*, p. 11.

The mental healthcare needs of offenders whose offences were known to be related to their mental disability, such as women who have killed their newborn babies due to post-natal depression, should be included in treatment provided.

Prisoners should be provided with full information about treatment options, risks and expected outcomes and they should participate in treatment planning and decision making.

⁶⁷ For a list of activities and services which help promote the mental health of prisoners, see WHO Regional Office for Europe Health in Prisons Project, *Consensus Statement on Mental Health Promotion*, 1998, para. 18.

Women with mental disabilities are at high risk of abuse in custodial settings. They should be protected, with adequate safeguards and supervision.

Staff awareness of factors that promote and harm mental wellbeing and a gender-sensitive approach to women's mental healthcare needs are essential components of the provision of positive mental healthcare in women's prisons. Staff should be made aware of times when women may feel particular distress, for example, of the acute psychological and physical difficulties menopause may cause for women in prison, and be sensitive to their situation and provide support.

For comprehensive discussion and guidance on prisoners with mental healthcare needs, men and women, please see *UNODC Handbook on Prisoners with Special Needs*, chapter on "prisoners with mental healthcare needs".

6.5 HIV prevention, treatment, care and support

As mentioned in section 3.1 women prisoners are a high risk group for sexually transmitted diseases, including HIV. In developing responses to HIV/AIDS in penal institutions, it is essential that programmes and services be responsive to the unique needs of women, including, for example, prevention of mother to child transmission. Tailored programmes addressing gender-specific issues need to be formulated to respond to the challenges encountered by women in prisons—in particular, programmes targeted at women who face multiple vulnerabilities and who are living with HIV.⁶⁸

Providing comprehensive HIV prevention, treatment, care and support for women in prisons

It is critical that prison systems provide access to a comprehensive package of interventions, including:

- Providing information on modes of HIV transmission and ways to reduce those risks, on testing, and treatment;
- Providing access to essential prevention commodities such as male and female condoms, sterile injecting equipment, and safe tattooing equipment;
- Providing voluntary confidential HIV testing and counselling services;
- Diagnosing and treating sexually transmitted infections;
- Providing drug dependence treatment, including substitution therapy for opioid dependence;
- Providing appropriate diet and nutritional supplements;
- Providing antiretroviral treatments, preventing and treating tuberculosis, other opportunistic infections and other blood-borne diseases such as hepatitis B and C;
- Providing access to reproductive health and family planning services;
- Care during pregnancy and delivery in appropriate settings and antiretroviral therapies to HIV positive pregnant women to prevent mother-to-child transmission;
- Providing post-exposure prophylaxis (PEP) to women having been exposed to a risk;
- Care for children, including those born to HIV-infected mothers; and
- Palliative care and compassionate release for AIDS and terminally ill patients.

Source: Women and HIV in Prison Settings, HIV/AIDS Unit, UNODC

⁶⁸ Women and HIV in Prison Settings, HIV/AIDS Unit, UNODC, p. 6.

The involvement of women prisoners in developing and providing health programmes and services increases the capacity of prisons to respond to HIV/AIDS. For example, health authorities in prison should encourage and support the development of peer-based education initiatives, and educational materials should be designed and delivered by prisoners themselves. Prison authorities should also encourage the development and support of self-help and peer-support groups that raise the issues of HIV/AIDS from the perspective of the women in prisons themselves.⁶⁹ Every effort should be made to involve non-governmental organizations in the development of HIV prevention, treatment, care and support programmes in prison, as well as to create links between prison programmes and community HIV prevention and treatment services.⁷⁰

Capacity building programmes on HIV should be included as part of the regular training curricula of prison staff. In addition to HIV prevention, treatment, care and support, issues such as gender and human rights with a particular focus on their link to HIV, stigma and discrimination should also be part of the curriculum.⁷¹

6.6 Treatment for substance abuse

As already mentioned, a high proportion of women prisoners are drug or alcohol dependent and are in need of treatment for their addiction. In most countries women experience social, cultural and personal barriers to treatment entry in the community. These include the significant stigma and shame associated with substance use and related problems among women, such as fear of losing custody of children, lack of partner and other family support to undertake treatment and lack of confidence about treatment. Under these circumstances prisons may provide an opportunity to address the substance addiction treatment needs of women prisoners, in a safe environment, away from the stigma associated with undertaking such treatment in the community. Such a programme may include the establishment of therapeutic communities in prisons, with a comprehensive package of treatment including medication, counselling and continuum of care following release. Women who are imprisoned for short periods, especially, may not be able to complete programmes offered in prisons, which increases the need for the continuation of care and support following release.

In addition, there is now increased knowledge and awareness that gender differences in substance use and related problems require different treatment approaches,⁷² and Member States of the United Nations have reached a consensus on treatment strategy development that specifically includes references to gender.⁷³ A gender-sensitive

⁶⁹ Women and HIV in Prison Settings, op. cit., p. 5.

⁷⁰ Ibid., p. 6.

⁷¹ Ibid., p. 6.

⁷² UNODC Drug Abuse Treatment Toolkit, Substance abuse treatment and care for women: Case studies and lessons learned, United Nations, New York, 2004, p. 23.

⁷³ Ibid., referring to the Twentieth Special Session of the General Assembly, Devoted to Countering the World Drug Problem Together, 8-10 June 1998, paragraph 8 of the Declaration on the Guiding Principles of Drug Demand Reduction.

approach to women's healthcare should therefore also take into account the need to provide specialized treatment programmes for female substance abusers.

A study conducted by UNODC, found that comprehensive programming that acknowledges gender differences, which provides women-only services and gives attention to pre-natal and childcare, parenting skills, relationships, mental health problems and practical needs could improve treatment outcomes. Programmes are also needed to address trauma and concurrent disorders, due to high rates of trauma and concurrent mental health problems among women.⁷⁴ The study also noted that pregnant and parenting women have unique needs that require approaches that are non-judgmental, comprehensive and coordinated.⁷⁵

Readers may wish to refer to *UNODC Drug Abuse Treatment Toolkit, Substance Abuse Treatment and Care for Women: Case Studies and Lessons Learned*, United Nations, New York, 2004, for further guidance.

6.7 Suicide and self-harm prevention

Developing strategies to prevent suicide and self-harm and to provide appropriate, gender-specific and individualized psychosocial and psychiatric support to those at risk need to form a comprehensive element of mental healthcare in prisons. Staff need to be trained to detect risk of self-harm and suicide, and offer assistance by providing support and referring such cases to specialists.

The health screening undertaken on entry to prison and regular assessments are key components of self-harm and suicide prevention strategies. The prevention of such acts also depends to a large extent on proper supervision and the ability of prison staff to identify prisoners at risk and refer them to mental health specialists without delay.

Staff should be aware of particular times when prisoners may feel high levels of stress, anxiety and depression, which may lead to self-harm and suicide. According to the United Kingdom NGO, Howard League for Penal Reform, for example, in the United Kingdom 50 per cent of those who take their own lives in prison do so during the first month. They point out that first night centres which have been put in place in a number of prisons in the United Kingdom have helped ease transition from the outside to prison life. The Howard League for Penal Reform's research shows that a dedicated wing, or unit, where all new prisoners spend their first 48 hours at the prison can prevent suicides. The organization emphasizes that such facilities are particularly important in the case of female prisoners, who are especially vulnerable to mental distress, and particularly during their first days of imprisonment.⁷⁶ The importance of a special reception area and procedures which assist newly

⁷⁴ Ibid., p. 90.

⁷⁵ Ibid., p. 92.

⁷⁶ The Howard League for Penal Reform, "Care, concern and carpets": How women's prisons can use first night in custody centres to reduce distress, 2006.

arrived prisoners to contact their families and to receive comprehensive information about the prison regime and where to seek help when in need, has been highlighted also by other literature, including WHO specifically.⁷⁷

Other means of support for prisoners have included peer support programmes, where prisoners are trained in peer support skills in order to monitor prisoners' distress at critical times, for example following admission to prison.⁷⁸

GOOD PRACTICE

Australia: Peer support to prevent suicide and self-harm^a

In South Australia's Mount Gambier prison, a specially trained and supported group of prisoners are on call 24 hours a day to listen to and support other inmates. In Western Australia, regular meetings occur between prison administrators and peer support prisoners.

^aMc Arthur, M., Camilleri, P. and Webb, H., *Strategies for Managing Suicide and Self-harm in Prisons*, Australian Institute of Criminology, August 1999, (www.aic.gov.au), p. 4.

In some systems self-harm and suicide attempts are penalized, which is unacceptable and exacerbates mental distress even further.

It must be emphasized that a fundamental element of strategies to reduce incidents of self-harm and suicide in prisons is to create a prison environment which is not harmful to the mental wellbeing of prisoners. In parallel to the identification and supervision of "at-risk" prisoners and the individual treatment provided to them, there is a need for prison managers and staff to take a proactive and positive approach to improve prison morale, in order to reduce incidents of self-harm and suicide.

For further guidance, please also refer to *UNODC Handbook on Prisoners with Special Needs*, chapter on "prisoners with mental healthcare needs".

6.8 Preventive healthcare services

Imprisonment provides a good opportunity to educate women about preventive healthcare measures, including from sexually transmitted diseases. Female prisoners should receive education and booklets about preventive healthcare measures, including from HIV and other forms of STDs, as well as health conditions relating specifically to women. Special courses on preventive healthcare and reproductive health should comprise elements of rehabilitation programmes on offer in women's prisons.

Preventive healthcare measures of particular relevance to women, such as pap smears and screening for breast and cervical cancer, available in the outside community, should also be offered to women deprived of their liberty. Contraception should be

⁷⁷ Möller, L., Stöver, H., Jürgens, R., Gatherer, A. and Nikogosian, H. (eds.), *Health in Prisons, A WHO guide to the essentials in prison health*, The World Health Organization Europe, 2007, p. 142.

⁷⁸ Mc Arthur, M., Camilleri, P. and Webb, H., *Strategies for Managing Suicide and Self-harm in Prisons*, Australian Institute of Criminology, August 1999, (www.aic.gov.au), p. 4.

available in prison on an equal basis as in the community, taking into account that contraceptive pills are not only used to prevent pregnancy, but also to treat other gender-specific conditions, such as painful menstruation. As the European Committee for the Prevention of Torture and Inhuman or Degrading Punishment has noted, “[t]he fact that a woman’s incarceration may—in itself—greatly diminish the likelihood of conception while detained is not a sufficient reason to withhold such medication.”⁷⁹

6.9 Hygiene

United Nations Standard Minimum Rules for the Treatment of Prisoners

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

European Prison Rules, 2006

19.7 Special provision shall be made for the sanitary needs of women.

The maintenance of sanitary conditions in prisons is important in preventing illness and disease while maintaining human dignity. In this context, female prisoners have special hygiene requirements which prison authorities are obliged to provide for.

Dormitories and rooms used for accommodation of female prisoners must have facilities and materials required to meet women’s special hygiene needs. Hot water should be available for the personal care of children and women, in particular women involved in cooking, those who are pregnant, breast feeding, menstruating and, where possible, for those going through menopause. In low-income countries where resources may not allow for the provision of a regular supply of hot water, such women should at least have increased access to water in order to fulfill their hygiene requirements.

Ready access to sanitary and washing facilities, safe disposal arrangements for blood-stained articles, as well as provision of hygiene items are of particular importance. These should be available to women under conditions in which they do not need to be embarrassed asking for them (for example either dispensed by other women or, better yet, accessible whenever needed). The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) considers that the failure to provide such basic necessities can amount to degrading treatment.⁸⁰

6.10 Health and staff training

Training must be provided for prison staff on the main points relating to women’s health issues, in addition to basic medicine and first aid, in order to understand

⁷⁹ CPT Standards, 2006 Edition, Extract from the 10th General Report, CPT/Inf (2000) 13, para. 33.

⁸⁰ Ibid., para 31.

symptoms of health problems and refer prisoners to specialists and apply first aid, where necessary. They also need to receive training relating to the basic healthcare of children living with their mothers, in order to be in a position to apply first aid in emergencies.

Staff have an important role to play in providing a supportive and healthy environment in prisons, which ensures that the harmful effects of imprisonment on the mental wellbeing of female prisoners are minimized. Such an environment relies on the establishment of positive relationships between prisoners and staff, the willingness of staff to listen to prisoners' problems and complaints and to respond clearly and fully to prisoners' questions regarding all aspects of prison life, including medical care, as far as possible.

See section 10 for the special healthcare needs of pregnant women and nursing mothers.

7. Access to legal assistance

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Principle 17

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.
2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

Principle 18

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.
2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.
3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.
4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.
5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

The challenges and disadvantages faced by many women in the criminal justice system have been described in chapter 1, section 1. Prison authorities have a crucial role to play in reducing female prisoners' vulnerability in the criminal justice system by providing them with information about their legal rights, by enabling their access to lawyers or paralegal services, providing facilities for meetings with lawyers, and, if required, interpretation services. NGOs and paralegal aid services also have a key role in assisting indigent women in the criminal justice system, especially in countries and communities where legal aid may be limited or unavailable.

Although these requirements are more acute in pre-trial detention, they also apply to women who have already been convicted, to assist them in lodging appeals against their conviction and/or sentence, in applying for commutation or pardon, if they are under sentence of death, or in gaining early conditional release, depending on their circumstances.

See also section 11.1 “pre-trial detainees” and chapter 3, section 1, “legal assistance on arrest”.

GOOD PRACTICE

Working with NGOs to improve legal safeguards in Malawi^a

Paralegal Advisory Service (PAS) was set up by four NGOs in 2000, in Malawi, with the support and assistance of Penal Reform International. PAS represents a unique partnership between the prison service and NGOs. Working closely with the prison administrations, PAS aims to do three things:

1. Link up the criminal justice system by improving communication, cooperation and coordination between the prisons, courts and police.
2. Increase legal literacy, helping prisoners to understand the law and how it affects them.
3. Provide legal advice and assistance, enabling prisoners to apply the law and to help themselves.

From the outset of their activities in 2000, PAS have targeted particularly cases involving vulnerable groups in prisons, including young offenders, women, prisoners with mental disabilities and prisoners with terminal illness to assist in their early release. It is estimated that the number of prisoners in pre-trial detention was reduced by around 25 per cent between 1996-99 and 2004. Many criminal justice stakeholders believe that PAS has played an instrumental role in the reduced remand population size.

^aSee Msiska, Clifford W., National Coordinator, Paralegal Advisory Service, The Role of Paralegals in the Reform of Pre-trial Detention: Insights from Malawi, for further details. (Contact: cmsiska@penalreform.org or pas-msiska@sdpn.org.mw)

8. Contact with the outside world

United Nations Standard Minimum Rules for the Treatment of Prisoners

37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

61. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

79. Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both.

European Prison Rules, 2006

60.4 Punishment shall not include a total prohibition on family contact.

Adequate contact with the outside world is an important component of strategies to reduce the harmful effects of imprisonment and assist with social reintegration of all offenders. One of the key elements of successful social reintegration has been identified as strong family ties and support from partners. In low-income countries and in harsh or restrictive prison environments, where activities and programmes provided in prisons may be lacking, contact with family, friends and organizations of civil society may be the main means of reducing the risk of alienation, other desocialising effects of imprisonment and mental disabilities among prisoners.

8.1 Maintaining family links

Separation from families and children has a particularly detrimental effect on women. As discussed in chapter 1, section 6.1, a large majority of women prisoners worldwide are mothers. In many countries women are the main caretakers of the family or single mothers. They are likely to suffer particularly from separation and worry about the wellbeing of their family members and children.

Unfortunately, since women prisoners are often housed at a long distance from their homes, due to the limited number of female prisons, they are likely to receive fewer visits from their families compared to their male counterparts. However, the special needs of women to have access to their families and children are rarely taken into account in regulations relating to prison visits. In fact, women may be further disadvantaged in some countries, for example, where conjugal visits are allowed. In a number of such countries women are discriminated against, in that they are not allowed such visits on an equal basis with men.

Adopting a gender-sensitive management approach and devising policy on this basis has already been recommended in section 1. Measures to be introduced within such a framework could include the introduction of visiting rules that match the needs of female prisoners, especially those who are mothers, as well as the elimination of any discrimination between men and women in terms of their visiting rights.

What can be done to maintain family links?

- Encourage visits to female prisoners, and where possible assist with transportation, especially where visits to mothers are concerned. Never charge for prison visits;
- Extend the length of visits when families confront difficulties in visiting due to the long distances involved, lack of resources and transport;
- Provide overnight accommodation for families travelling a long way, free-of-charge;

GOOD PRACTICE

It is a good practice to allow longer visiting hours if the visitors have to travel a long distance. In some prison systems special rooms and houses are provided for the prisoners to meet their long-term visitors in an atmosphere that allows for more privacy and intimacy. This is particularly important for visits with all the family, including children. In normal circumstances and where special security considerations do not apply, families need to be able to sit down together within sight but out of hearing of prison staff.

- Ensure that visits with children are always open (allowing contact) and special rooms are available that provide informal communication in a pleasant and comfortable environment;
- If prisoners have access to telephones, increase the telephone calls female prisoners are allowed to make to their families if they are unable to visit due to the long distance;
- Never prohibit family visits as a disciplinary measure in response to rule breaking by female prisoners;
- Where conjugal visits are allowed, ensure that women are not discriminated against in the exercise of this right;
- Grant prison leave to the greatest extent possible on medical, educational, occupational and family grounds; and do this as soon as, and as frequently as possible, taking into account risk factors and family circumstances related to the prisoner concerned;⁸¹
- Develop cooperation with social services and NGOs to assist with contact between women prisoners and their families.

In parallel to efforts to maintain links with families, prison authorities should consult fully with prisoners, and especially victims of domestic violence and other forms of abuse, to determine who can visit them. Family members should not automatically be allowed to visit without consultation with the prisoner concerned.

⁸¹ Council of Europe, Committee of Ministers, Recommendation on Prison Leave, No. R (82) 16, 1 and 2.

GOOD PRACTICE

Remote Parenting Dates in Kenya

Thika Women's Prison in Kenya began holding 'Remote Parenting Days' in 2007. The officer in charge of the prison said that the introduction of the Remote Parenting Day aimed to speed up the rehabilitation process of prisoners, who were traumatized when out of touch with their families. They planned to organize the event on a monthly basis. The idea was borrowed from China after officers from the Kenya prison administration conducted a study visit to the country.^a

Italy: NGO helping to maintain links between children and parents in prison^b

Bambinsenzaresbarre (BSS) is an NGO which works with imprisoned parents at San Vittore and their children on the outside. BSS acts as a mediator between the outside and the inside.

In the case of women prisoners, BSS is usually involved in the following two steps:

1. Dealing with the woman's immediate concerns such as where the child is and by whom s/he is being looked after;
2. Working with the mother, discussing her relationship with the child and how the mother can maintain the relationship as well as possible whilst in prison.

Following imprisonment, often the imprisoned mother will not get to see the child for a long time and BSS can help prepare the mother for the meeting and the child's reaction to seeing her, such as being angry or confused.

For the imprisoned fathers there is not usually the same emergency situation as when the mother is imprisoned. Often the parents separate when the husband goes to jail and this results in a difficult, but different situation. BSS works at mediation for the family.

Whether the mother or father is imprisoned, if the child remains with his or her own family then BSS can also help prepare for visits. If the child is in an institution, then BSS can liaise with the institution responsible for the child and inform them about the visit procedures and stress the importance of the meeting for both the parent and the child.

^aThe impact of parental imprisonment on children, by Robertson, O., Women in Prison and Children of Imprisoned Mothers Series, Quaker United Nations Office, April 2007, p. 27 and Opiyo, P., "Joy amid despair: Women's Prison hosts families of inmates" East African Standard, 3 January 2007.

^bThe Quaker Council for European Affairs country report on Italy, accessed at <http://qcea.quaker.org/prison/Country%20Reports/Italy%20Report%20-%20Final.pdf>.

8.2 Conditions during prison visits

Conditions in which visits are conducted are of great importance to maintaining social links and for preserving prisoners' self-respect. Staff should be specially trained for conducting visits in an atmosphere of human dignity.

- Visits involving children should take place in an environment that is not hostile in terms of the physical surroundings and staff attitudes. Children and their belongings should be searched with sensitivity.
- It is considered good practice to allow for physical contact during visits and to resort to the physical separation of visitors only in exceptional situations. There should be no restrictions especially to physical contact between mothers and their children.

- Children may be tired and restless during visits, especially if they have traveled long distances and have to wait for extended periods before they can see their mothers. Staff should show understanding.
- Parents may want time together without the interruption of their children. Providing play areas for visiting children is a way of making the visit less intimidating for the child, while enabling parents to have some privacy.

Making an effort to enable imprisoned women to meet with their families in a friendly and comfortable environment will have a significant impact on the number of visits they receive and the quality of those visits, affecting the social reintegration prospects of female prisoners.

8.3 Contacts with the community

One of the most important and useful ways of maintaining links between prisoners and the outside world, is enabling community participation in the daily activities of prisoners, as far as practicable. In this way, life in prison can be brought closer to resembling normal life, as recommended by international instruments, while the burden on prison authorities in fulfilling their obligation to provide a varied and balanced regime, as well as other services, is lightened. For those prisoners who have no family or relatives, or whose family and relatives are unable to visit, contact with community agencies may be the only means by which they will have some personal communication with the outside world, which is an essential component of rehabilitation.

Involving the community in prison activities is also a good way of increasing public awareness about prisons and encouraging public support to efforts made by prison authorities to improve the quality of prison regime and services provided to prisoners. (See also section 11.2, “foreign national women”.)

9. Preparation for release and post-release support

United Nations Standard Minimum Rules for the Treatment of Prisoners

60 (2) Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.

80. From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.

81. (1) Services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall ensure, so far as is possible and necessary, that released prisoners be provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.

(2) The approved representatives of such agencies shall have all necessary access to the institution and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his sentence.

(3) It is desirable that the activities of such agencies shall be centralized or coordinated as far as possible in order to secure the best use of their efforts.

The process of preparation for release and resettlement begins in prison and continues after release and there is a need for continuity of assistance spanning this period. This requires close liaison between social agencies and services, as well as relevant community organizations and prison administrations during sentence.

In addition, there needs to be a programme of assistance to prepare for release close to the date of release (often starting 1-2 months prior to the release date), to ensure that the social, psychological and medical support needs of the prisoner are met and continue uninterrupted after prison. Activities undertaken in prison need to be linked to services outside to ensure continuum of care and monitoring of released prisoners. Former prisoners should be able to complete any educational and vocational training courses, as well as any medical treatment started in prison.

The obstacles, and their intensity, encountered in post-release reintegration by women in different countries and cultures may vary immensely. Due to the particular gender-related difficulties women are likely to face following imprisonment, prison authorities should cooperate with probation services, social welfare departments and NGOs to design comprehensive pre- and post-release reintegration programmes for women.

Assistance provided should cover housing and employment needs, taking into account the parental status and caring responsibilities of the women, parenting skills, psychological support and continued treatment for any substance addiction and other health problems. Efforts to support and strengthen relationships between the released prisoner and her family members (as well as others who may have been caring for her children) are also important to minimize the difficulties likely to be encountered following release, due to the different expectations of both sides.

Prison authorities should utilize options such as open prisons and half-way houses, to the maximum possible extent for female prisoners, to ease their transition from prison to liberty and to re-establish contact between female prisoners and their families at the earliest possible stage.

Where early conditional release (parole) is discretionary, the cases of women prisoners should be considered favourably, unless there are particular risks or exceptional

circumstances involved. Consideration may be given to revising prison laws and regulations to apply more liberal conditions for the granting of remission and parole in the case of mothers, in line with the gender-sensitive management policy suggested in section 1.

GOOD PRACTICE

Post Release Support by NGO in the United Kingdom

An NGO in the United Kingdom, Women in Prison, provides practical help to enable women prisoners to manage their responsibilities for home and family outside and to prepare for release. Advice, advocacy and support is available in custody and after release for as long as needed. NGO workers can advise on housing, accessing legal rights, managing tenancies, rent arrears, housing benefit and refer to other specialist organizations.^a

Mediating between families and prisoners in Afghanistan

In Afghanistan many women prisoners are rejected by their families due to the offences they have committed, especially if these comprise so-called “moral crimes”, and it is very difficult for women who have been abandoned by their families to survive on their own in the community due to social stigmatization, as well as economic difficulties. In order to help women return to their families, lawyers and social workers of NGOs, such as Medica Mondiale and Afghan Women’s Educational Centre, have been mediating between the prisoners and their families, often resulting in the released women being accepted back by their families.^b

^aWomen in Prison website: www.womeninprison.org.uk.

^bUNODC, Afghanistan, Female Prisoners and their Social Reintegration, op. cit., p. 36.

Sometimes women may be unable to return to their families, since they will have been abandoned due to their imprisonment. The prison authorities should work closely with community support agencies and NGOs to help former women prisoners find suitable accommodation and jobs, and to settle back into their communities.

It is vital that continued support is provided to women with a history of abuse and domestic violence. During preparation for release prison authorities should establish contact and exchange information with community services, including probation services, NGOs and other social and psychological support services to ensure ongoing support to women at risk. Legal assistance should be provided as necessary.

All prisoners should be made aware of the risk of drug-related death in the immediate post-release period as a result of drug overdoses. All prisoners with drug addictions should be linked into ongoing after-care with community-based services immediately on release from prison. This should be part of a comprehensive and integrated approach to treatment in prison and the community.

In some countries rape victims or those who have been convicted of “moral offences” may face the risk of murder on release from prison, by the male members of their families (so-called “honour killings”). They should be provided protection. Prison authorities should collaborate with specialized community services, where they exist, and relevant NGOs to assist such women after release. They may need to be accommodated

in confidential shelters while suitable housing is found. As a minimum, shelters should incorporate facilities and expertise to provide psychosocial support and legal advice to former prisoners. Care should be taken that protection provided to prisoners should not be in the form of, or in practice amount to, an extension of imprisonment. Protection should be provided on a voluntary basis, ideally in shelters or safe-houses managed by community services or NGOs, or with a joint management arrangement.

In this context, the Special Rapporteur on violence against women, its causes and consequences, has noted:⁸²

“States should establish, strengthen or facilitate support services to respond to the needs of actual and potential victims, including appropriate protection, safe shelter, counselling, legal aid, health-care services, rehabilitation and reintegration into society.”

“Protective custody as a means of dealing with victims of VAW [violence against women] should be abolished. Any protection provided should be voluntary. Shelters should be opened and offer security, legal and psychological counselling and an effort to help women in the future. NGOs’ cooperation in this field should be sought.”

In addition, the establishment of community centres, providing assistance with health, education and legal matters to women could be a way of providing ongoing assistance to female former prisoners who are disadvantaged due to economic, cultural and social factors.

10. Pregnant women and women with children in prison

International Covenant on Economic, Social and Cultural Rights

Article 10

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

United Nations Convention against All Forms of Discrimination Against Women

Article 12

[...]

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

⁸² Report of the Special Rapporteur, Ms Radhika Coomaraswamy, Commission on Human Rights, Integration of The Human Rights of Women and the Gender Perspective, Violence Against Women, 6 January 2003, E/CN.4/2003/75, paras. 90 and 91.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,

Principle 5 (2)

Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. [...]

Convention on the Rights of the Child

Article 7 (1)

The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

Article 3 (1)

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 6 (2)

States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 9(3) States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

United Nations Standard Minimum Rules for the Treatment of Prisoners

23. (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practical for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

In its General Comment 28, the Human Rights Committee stated that "pregnant women who are deprived of their liberty should receive humane treatment and respect for their inherent dignity at all times, and in particular during the birth and while caring for their newborn children" and required states parties to report on facilities and medical and health care for imprisoned mothers and their babies.^a

Council of Europe, Parliamentary Assembly Recommendation 1469 (2000), on Mothers and babies in prison, adopted on 30 June 2000.

5. In view of the adverse effects of imprisonment of mothers on babies the Assembly recommends that the Committee of Ministers invite member states:

- i. to develop and use community-based penalties for mothers of young children and to avoid the use of prison custody;

^aHuman Rights Committee, General Comment 28 on the equality of rights between men and women, Para 15, U.N. Doc. HRI/GEN/1/Rev.7 at 153 (2004).

- ii. to develop education programmes for criminal justice professionals on the issue of mothers and young children, using the United Nations Convention on the Rights of the Child and the European Convention on Human Rights;
- iii. to recognize that custody for pregnant women and mothers of young children should only ever be used as a last resort for those women convicted of the most serious offences and who represent a danger to the community;
- iv. to develop small scale secure and semi-secure units with social services support for the small number of mothers who do require such custody, where children can be cared for in a child-friendly environment and where the best interests of the child will be paramount, whilst guaranteeing public security;
- v. to ensure that fathers have more flexible visiting rights so that the child may spend a little time with its parents;
- vi. to ensure that staff have appropriate training in child care;
- vii. to develop appropriate guidelines for courts whereby they would only consider custodial sentences for pregnant women and nursing mothers when the offence was serious and violent and the woman represented a continuing danger
- viii. to report back on the progress made by the year 2005.

Pregnant women and women with young children should not be imprisoned unless absolutely necessary. Appropriate legislation should be in place and sentencing guidelines for courts should underline this principle. If they are imprisoned, the State takes on the responsibility to provide adequate care for the women and their babies.

10.1 Pregnant and nursing women

The pre- and post-natal care provided should be equivalent to that available outside prison.

Pregnant women should be transferred to civilian hospitals for childbirth. If the baby is born in prison, delivery should be undertaken by a medical specialist in facilities suitable for childbirth. Wherever the birth takes place, it should be registered immediately, but the fact that the baby was born in prison should not be mentioned on his or her birth certificate.

Security measures applied when taking pregnant women to hospital and during childbirth should be the minimum necessary. As already mentioned, the restraining of pregnant women during examinations and childbirth is unacceptable.

Breast-feeding mothers should be able to breastfeed their babies in a comfortable environment and the prison regime should be made flexible both for pregnant women and for breast-feeding mothers.

Pregnant or nursing women should receive advice on their diet under a programme to be drawn up and monitored by a suitably qualified prison physician. Appropriate

food must be provided for babies, children and breast-feeding mothers, free of charge, including milk, high protein products and adequate amounts of fresh fruit and vegetables. Arrangements must be made for storing such products adequately.

The medical and nutritional needs of women who have recently given birth, but whose babies are not with them in prison, should be included in treatment programmes.

10.2 Children living with their mothers in prison

The debate as to whether children of imprisoned mothers should stay with them in prison, and for how long, continues. Viewpoints vary among specialists, with no consensus having been reached. Countries worldwide have very different laws as to how long children can stay with their mothers in prison. Nevertheless, there is general consensus that, in trying to resolve the difficult question of whether to separate a mother from her child during imprisonment, and at what age, the interests of the child should be the primary consideration. Issues to take into account should include the conditions in prison and the quality of care children can expect to receive outside prison, if they do not stay with their mothers. This principle would imply that prison authorities should demonstrate flexibility and take decisions on an individual basis, depending on the circumstances of the child and the family. Applying rigid rules in all cases, where circumstances vary immensely, is all too often not an appropriate course of action.

On admission to prison the number and personal details of children accompanying their mothers should be recorded.

During the time which they spend in prison, children should be provided with ongoing good quality primary health care services and their development monitored by a prison psychologist and specialists in child development (e.g. on regular visits from community healthcare services). The environment provided for the child's upbringing should be as close as possible to that of a child outside prison, with a nursery staffed by specialists who can take care of the child while separated from his or her mother. They should have adequate play and exercise facilities. Mothers should be provided with the maximum possible opportunities to spend time with their children. The availability of nurseries in prisons is also important to ensure that women with children can participate in prison activities and programmes on an equal basis with other prisoners.

The prison administration should collaborate with health clinics for vaccinations and periodic examinations of children for administering their vaccinations and monitoring their physical development.

Children living in prison should never be treated as prisoners themselves. They should not be subjected to disciplinary punishments. In principle they should be free to leave the prison and participate in outside activities, provided their mothers allow

them and in compliance with security considerations. Mechanisms should be in place to protect children from all forms of physical and psychological abuse in prisons.

GOOD PRACTICE

Bulgaria: Kindergarten for children living in prison

"The prison had a special department for newborn babies. The kindergarten comprised of four rooms, including a lavatory, a room for changing and washing the babies, a kitchen and a dormitory. This unit was new and was in a perfect condition: clean, spacious, sunny (with glass windows), with appropriate furniture (many closets), an area to play with toys and a small veranda where mothers could walk with their babies. On the day of the IHF delegation visit there were three babies and their quite young mothers were taking care of them spending the whole day there (they sleep in the same place), an activity that equals inmates' working day."^a

United States: Nursery for infants and their imprisoned mothers, with special programmes

The Children's Centre at the Bedford Hills Correctional Facility in New York, United States, houses a nursery, where babies of women involved in the prison programmes are cared for until they are 1 year old. When there is certitude that mother and baby can leave together, an extension to 18 months is granted. The Children's Center promotes parenting skills and serves the infants living at the institution and the inmates' children living outside the prison. Approximately 75 mothers are involved with the Children's Center at one time. Over the course of a year, it serves 700 women. Most women are involved in the programme from 1 to 5 days each week. The purpose of the programme is to help inmates "learn to be mothers," with a focus on meeting the women's mental health needs. Other focus areas are relationships with family, transition to the community, and parenting. A case management approach is used to match women's needs to particular activities and services. Programming is bilingual, and many activities are culturally specific. The employment of inmates as coordinators, most of whom were previously in the programme themselves, is a unique feature.^b

Latvia: Children's home for children of mothers in prison

The women's prison is semi-closed and there is a children's home located in a separate building on prison grounds, where children stay until the age of four. Imprisoned women are allowed to stay with their children all the time until the age of one, and then are allowed to meet their children twice a day for 1.5 hours. Once children reach the age of four they are either placed in the care of relatives or in other children's homes, which house 8-10 children on any given day.

Within a project funded by the Soros Foundation-Latvia, the children's home cooperates closely with the Social Paediatric Centre and has started an innovative parenting skills programme for women prisoners.^c

India: Crèches and nursery schools for prisoners' and prison officials' children

Prisons in Karnataka state, India, have set up crèches and nursery schools attended by children imprisoned with their parents, children of prison officials and children living close to the prison. These joint facilities prevent duplication of provision (one crèche for prisoners' children, another for every-one else) or the creation of crèches with very small numbers of users (there were just 29 children living with their mothers in Karnataka's prisons in 2006). The scheme helps to mitigate the problem of children living in prison becoming socially isolated by allowing them to mix with children from the surrounding area. However, crèche supervisors (who include imprisoned mothers) will need to ensure that children from one group (e.g. prisoners' children) are not stigmatized by those from another.^d

^aPlaces of Detention in Bulgaria, Report from the visit of the delegation of human rights NGOs to places of detention in Bulgaria on 27 and 28 September 2004, International Helsinki Federation for Human Rights, 2005, p. 47. The information relates to Sliven prison, which is the only prison for women in Bulgaria.

^bMorash et al., op. cit., p. 8.

^cWomen in Prison in Central Europe, Overview and Statistics, PRI Information package, Latvia.

^dQuaker United Nations Office, The Impact of parental imprisonment on children, Women in Prison and Children of Imprisoned Mothers Series, Robertson, O., April 2007, p. 32.

Cambodia: NGO support to pregnant women and mothers in prison

In 2003, the NGO, Cambodian League for the Promotion and Defense of Human Rights (LICADHO) started an Adopt-A-Prison Project to assist babies, children and pregnant women in prison. The program aims to facilitate individuals and organizations in providing assistance to these vulnerable groups in prison. In October 2006 13 individuals and organizations were partners in the project and were helping to support 10 prisons that had prisoners with children living with them. During 2005-2006, the Adopt-A-Prison Project provided food, materials and medical assistance to children, their parents and pregnant women living inside Cambodia's prisons. The project is also concerned with the lack of education and developmental opportunities provided to incarcerated children, and is planning a second phase to develop solutions to this problem.^e

Spain: Family cell units for prisoners with children

A prison in Aranjuez, Spain, offers family units for children and their imprisoned parents (both parents), where families can stay together, enabling the children to bond with their imprisoned parents. The spacious units provide a child-friendly environment with a nursery school and a playground outside. A typical room is approximately 14 square meters (150 square feet), with walls covered with pictures of Mickey Mouse, Donald Duck and family photos. There is a double bed, a crib full of toys, a small bathroom and windows facing outside prison. A doctor comes twice a week. The children can stay in prison up to the age of 3. After that the children are removed and put with relatives or with social services, and their parents go back to regular cells.^f

^eLICADHO, Prison Conditions in Cambodia, 2005 and 2006: One day in the life..., January 2007, pp. 32-33.

^f"Spanish prison offers family cell units for inmates with children", The Associated Press, Monday, February 5, 2007, Aranjuez, Spain.

The removal of the child from prison should be undertaken with sensitivity and only when alternative care arrangements for the child have been identified. After children are separated from their mothers and placed in an institution, with family or relatives, women prisoners should be given the maximum possible opportunity to meet with their children, to reduce the mental distress of the mothers and the emotional trauma of the child, as well as to protect the children from developmental problems. Interim arrangements, such as overnight visits, may be considered during the first period following separation in order to enable the child and mother to gradually get used to separation.

The responsibility of the State to care for the child does not end with the placement of the child in an orphanage or with the relatives of the prisoner. In line with Article 9 (3) of the Convention on the Rights of the Child, the responsibility of the State extends to enabling the child to have regular contact with his or her mother, to ensure that the adverse effects of separation on the emotional development of the child are minimized. Practical measures to enable regular contact between the mother and child may include providing financial assistance to cover the cost of travel to the prison, as well as minimizing bureaucratic procedures.

11. Special categories

11.1 Pre-trial detainees

International Covenant on Civil and Political Rights

Article 10

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

United Nations Standard Minimum Rules for the Treatment of Prisoners

84. (1) Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as “untried prisoners,” hereinafter in these rules.

(2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.

(3) Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit by a special regime which is described in the following rules in its essential requirements only.

85. (1) Untried prisoners shall be kept separate from convicted prisoners.

(2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

[...]

92. An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Principle 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 6

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

Principle 7

1. States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.

2. Officials who have reason to believe that a violation of this Body of Principles has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers.

3. Any other person who has ground to believe that a violation of this Body of Principles has occurred or is about to occur shall have the right to report the matter to the superiors of the officials involved as well as to other appropriate authorities or organs vested with reviewing or remedial powers.

Principle 9

The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

The key principle which should be applied to all detainees who have not yet been convicted and sentenced by a court of law is that they should be considered innocent and be treated as such, until such sentence is passed. But in practice women are often discriminated against in the application of this principle due to the limited accommodation available for female prisoners, which can lead to untried women being held with convicted prisoners in many countries, contrary to SMR Rule 85 (1) and being subjected to the same regime as convicted prisoners. Again, since many women prisoners are held in a higher security level than necessary, due to the limited number of women's prisons, this means that many untried women, who still retain their status of innocence, are held in high security conditions. This practice is unacceptable.

Even less acceptable is the practice of automatically classifying pre-trial detainees as high risk prisoners. It has been reported, for example, that in some countries individuals on remand are automatically classified as "maximum security" prisoners, with corresponding restrictions on personal property and visiting entitlements, among others, which impacts on the sentenced women with whom they are housed.⁸³ "The presence of remand prisoners effectively means that medium and minimum security prisoners may serve their sentences in an environment that is more onerous than is necessary for their classification status".⁸⁴ The high security classification of persons who have not been convicted of a crime is unacceptable in all cases, but has a particularly harmful impact on women, who experience high levels of distress when placed in high security conditions, including restrictions on visits from families.

⁸³ Women in prison: a commentary on the Standard Minimum Rules for the Treatment of Prisoners, op. cit., p. 84.

⁸⁴ Beyond Bars Alliance NSW, Submission to the Anti Discrimination Commissioner for an Inquiry into the Discrimination Experienced by Women Within the Criminal Justice System in New South Wales, 2005, at <http://www.sistersinside.com.au/media/NSWADCreport.pdf> (accessed 20 July 2005) p. 8-9, cited in Women in prison: a commentary on the Standard Minimum Rules for the Treatment of Prisoners, op. cit., p. 84.

- Pre-trial detainees and convicted prisoners should be accommodated separately. If exceptional circumstances hinder the strict application of the rule of separating untried prisoners from the convicted, then prison administrators must ensure that a different regime applies to those who have not yet been convicted. This would mean that such women should enjoy all the rights which pre-trial detainees enjoy, in terms of visiting rules, personal property, access to outside medical care, food, etc, outlined in SMR, Rules 84-93. Every effort should be made, in particular, to ensure that women's contact with their families and children is not disrupted beyond that which is necessary.
- The key requirement of pre-trial detainees is immediate and regular access to legal counsel. Prison staff should assist prisoners both in accessing lawyers and in facilitating their meetings with lawyers. Women, often illiterate, lacking in confidence, less aware of their rights and with psychosocial disabilities in many cases, are in particular need of such assistance.
- In addition, female pre-trial detainees have special safety requirements, due to their especially vulnerable status. Women are at risk of abuse particularly during their pre-trial detention period, when sexual abuse and other forms of violence can be used as a means of coercion to extract confessions. Therefore it is vital that policies and rules that have been outlined in section 4, Security and Safety, are applied vigorously in pre-trial detention facilities.
- Women detained in relation to "reproductive crimes" may be at heightened health risks during pre-trial detention, having recently experienced pregnancy, abortion, miscarriage or delivery in health- and possibly life-threatening circumstances. Their special healthcare needs should be addressed, and where necessary they should be transferred to community hospitals for treatment.

11.2 Foreign national women

United Nations Standard Minimum Rules for the Treatment of Prisoners

38. (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.

(2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

Council of Europe, Committee of Ministers, Recommendation No. R (84) 12 Concerning Foreign Prisoners^a

13. Foreign prisoners, who in practice do not enjoy all the facilities accorded to nationals and whose conditions of detention are generally more difficult, should be treated in such a manner as to counterbalance, so far as may be possible, these disadvantages.

^aAdopted by the Council of Europe, Committee of Ministers on 21 June 1984 at the 374th meeting of the Ministers' Deputies.

Vienna Convention on Consular Relations

Article 36

Communication and contact with nationals of the sending State

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.

Model agreement on the transfer of foreign prisoners and recommendations for the treatment of foreign prisoners^a

[Extracts]

ANNEX I

I. General principles

1. The social resettlement of offenders should be prompted by facilitating the return of persons convicted of crime abroad to their country of nationality or of residence to serve their sentence at the earliest possible stage. In accordance with the above, States should afford each other the widest measure of co-operation;

[...]

7. A transfer, to either the country of nationality or of residence, should be effected only with the expressed free will of the prisoner.

[...]

13. The person transferred for the enforcement of a sentence passed in the sentencing State may not be tried again in the administering State for the same act upon which the sentence to be executed is based.

^aSeventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, 26 August to 6 September 1985, A/CONF. 121/10, 25 April 1985.

II. Procedural regulations

[...]

18. The period of deprivation of liberty already served by the sentenced person in either State shall be fully deducted from the final sentence.

19. A transfer shall in no case lead to an aggravation of the situation of the prisoner.

Foreign national prisoners may be either resident or non-resident in the country of imprisonment. Both groups face particular difficulties.

Prison authorities should demonstrate sensitivity towards the needs of foreign national women, due to their particular vulnerability. Those who are non-resident particularly, are likely to be more susceptible to the distress of isolation, compared to other women. They may have little or no family contact, including with their children. Their feeling of isolation will be exacerbated if they do not speak the language most commonly spoken in the prison. Women who are single parents or the sole carers of the family are likely to be extremely worried about the welfare of their children, particularly if the children are in the prisoner's home country.

If they are awaiting trial, their anguish will be increased by factors such as limited understanding of the legal system, lack of information about the precise charges against them, and the sentence they face, and problems with accessing appropriate legal counsel. If they have suffered sexual abuse or other forms of violence, for example, as victims of human trafficking or as migrant domestic workers, they will feel extremely vulnerable, fearing further ill-treatment.

- Prison authorities must ensure that all foreign prisoners, resident and non-resident, have immediate and regular access to their consular representatives (unless the prisoner explicitly opposes such contact), legal counsel and interpreters, equal access to information in a language they understand, as well as prison activities and other services.
- If the prisoners' regular communication with their family and relatives is difficult due to their residence in another country, prison authorities should provide additional means to compensate for this disadvantage. These may include increasing foreign nationals' rights to use the telephone, enabling them to call at hours that take into account time differences, allowing for longer visits, to compensate for infrequency. Where resources allow, financial assistance to cover travel and telephone costs should be considered.
- Legal assistance, counseling and medical services, disciplinary hearings and complaints mechanisms should all take into account the language requirements of foreign national prisoners, and interpretation provided as necessary.
- The provision of language courses should be a priority for those who have linguistic needs, and especially those who have been sentenced to long prison terms.

- Additional measures need to be taken to ensure that foreign national prisoners have access to activities and programmes—especially non-resident foreign national prisoners, who do not speak the language of the majority prison population—by providing interpreting services, where necessary, as well as, for example, by encouraging peer support and self-help groups to be formed among foreign nationals of the same nationality. The placement of foreign nationals of the same country close to each other should also be considered, following consultation with the prisoners.
- NGOs supporting foreign national prisoners should be encouraged to visit prisons and implement appropriate programmes. The contact details of such organizations should be made available to prisoners. The support of community organizations will be extremely beneficial to prison administrations, which are usually not in a position to address all the needs of foreign national prisoners.
- The transfer of non-resident foreign national women prisoners to their home countries, especially if they have children in the home country, should be considered as early as possible during their imprisonment, provided that the prisoner so wishes, and provided the transfer does not entail any human rights risks for the prisoner. The possibility and consequences of serving their sentence in their own country should be fully explained to foreign national prisoners and decisions taken on the basis of the prisoner's full consent.
- Resident foreign national prisoners who face deportation when they have completed their sentences will face further separation from their families, which entails an additional punishment for such persons, especially if they are mothers. Where national legislation rules that foreign prisoners are to be deported, prison authorities and consular representatives should make every effort to assist with access to legal counsel to help with any appeals process, and when deportation is inevitable, with obtaining necessary documents, travel arrangements, and facilitating communication between prisoners and relatives in the home country to the maximum possible extent. Organizations of civil society can provide valuable assistance during this process, aiding contact between prisoners and distant family members, helping resolve a myriad of problems and explaining procedures.

Please refer to *UNODC Handbook on Prisoners with Special Needs*, chapter on “foreign national prisoners”, for more comprehensive guidelines and suggestions relating to the treatment of foreign national prisoners, men and women.

11.3 Girls in prison

Girls in conflict with the law are often detained in prisons, frequently together with female prisoners, due to lack of appropriate responses to the situation of children, and in particular girls in conflict with the law. This handbook does not cover the setting-up of separate juvenile justice institutions to respond to the social reintegration requirements of girls in conflict with the law, but it is important to note that

separate strategies and policies in accordance with international standards, including the excerpt below from the Convention on the Rights of the Child, need to be designed for the treatment and rehabilitation of this category, even when the numbers are limited.

Convention on the Rights of the Child

Article 3

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

United Nations Standard Minimum Rules for the Treatment of Prisoners

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

[...]

(d) Young prisoners shall be kept separate from adults.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)**Rule 26.4**

Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

Commentary to United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)

Rule 26.4 addresses the fact that female offenders normally receive less attention than their male counterparts, as pointed out by the Sixth UN Congress on the Prevention of Crime and Treatment of Offenders. In particular, resolution 9 of the Sixth Congress calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. Moreover, this rule should also be considered in the light of the Caracas Declaration of the Sixth Congress, which, inter alia, calls for equal treatment in criminal justice administration, and against the background of the Declaration on the Elimination of Discrimination against Women and the Convention on the Elimination of All Forms of Discrimination against Women.

3.

Reducing the female prison population by reforming legislation and practice: suggested measures

The growing number of female prisoners highlights the need to review legislation, policies and practices that lead to the increased imprisonment of women, which has an adverse impact, not only on the women themselves, but on their families and most specifically on a large number of children.

As a first step, account needs be taken of the most common reasons for women's detention and imprisonment worldwide and for the growth of the female prison population.

The offences for which women are imprisoned differ considerably from those of men:

- The majority of women prisoners are held for non-violent offences;
- When women are convicted of violent offences they are likely to have committed the crime against their male partners or someone close to them. Violent offences are often committed against the person who has abused a woman;
- A large proportion of women are held for drug-related offences. Many are drug addicts themselves. When drug trafficking is involved, it is likely that the women have been used as drug couriers for small sums of money;
- Other frequent offences committed by female prisoners include property crimes, such as theft and fraud, sometimes referred to as crimes of poverty;
- In countries where legislation derives from various interpretations of religious laws, women are imprisoned for “crimes against morality”, including “adultery” and “fornication”. Although laws may appear to be gender neutral, such charges are more often brought against women. In addition, in many cases trial procedures do not meet the requirements of international standards: women are discriminated against during trial proceedings and convicted of “moral offences”, even though many may be victims themselves.

In addition:

- Increasingly punitive criminal justice policies, coupled with the economically disadvantaged status of women, have led to an increase in the number of women held in pre-trial detention in many countries.
- The number of foreign national women in the criminal justice system of many countries is growing, due to the increase in human trafficking and migration.

It is evident from the above and the typical background of women in the criminal justice system, described in chapter 1, that the profile of female prisoners is quite different to that of men. Their backgrounds, offences they commit, their caring responsibilities and the particularly harmful effects of imprisonment on women need to be taken into account in devising criminal justice policies, in order to ensure that women are not imprisoned unnecessarily and unjustifiably, putting pressure on the scarce resources of prison systems worldwide.

It cannot be adequately emphasized that a large majority of female offenders do not pose a risk to society and their imprisonment does not help, but hinders their social reintegration. Many are in prison as a direct or indirect result of the multiple layers of discrimination and deprivation experienced at the hands of their husbands, family and the community. What most female offenders need is to be treated fairly in the criminal justice system, taking into account their backgrounds and reasons that have led to the offence committed, as well as care, assistance and treatment in the community, to help them overcome the underlying factors leading to criminal behaviour. By keeping women out of prison, where imprisonment is not strictly necessary or justified, their children may be saved from the enduring adverse effects of their mothers' imprisonment, including their possible institutionalization and own future incarceration.

"I think if 90 per cent had some alternative, they would turn around and be made into worthwhile citizens and not be a drain on society as they are as incarcerated inmates".

A prison administrator in the United States.^a

^aNational Institute of Justice, Research in Brief, August 1998, p. 6.

Women's rate of imprisonment can be decreased by introducing legislative reforms aiming to reduce the prison population as a whole, which could include the decriminalization of certain acts, the removal of mandatory sentencing, which does not allow for discretion, based on the circumstances of the offence, vulnerability and caring responsibilities of the offender, and the more frequent use of alternatives to prison.

Due to the non-violent nature of most crimes committed by women and the minimal risk most female offenders pose to the public, they are ideal candidates for non-custodial sanctions and measures.

Changes to legislation and the implementation of legislation should aim to:

- Ensure that women enjoy equal rights with men during trial procedures, in law and practice, and are accorded all guarantees set out in Articles 9 (3) and 14 of ICCPR.
- Keep out of prison those who have committed minor and non-violent offences and those who are in need of medical or psychiatric treatment.
- Reduce the numbers of pregnant women and mothers with dependent children in prison to a minimum.
- Ensure that the circumstances of the offence and the vulnerability of the offender be taken into account during sentencing (e.g. the commission of murder against a violent partner, husband or family member; drugs offences, where women have been used as drug couriers).
- Ensure that a wide range of alternatives to pre-trial detention and imprisonment are available in legislation.
- Ensure that women are not discriminated against in the application of alternatives to pre-trial detention and prison, due to their vulnerable social and economic status. Homelessness, substance abuse, lack of employment and lack of a supportive family should never be seen as risk factors, but rather as social challenges that need to be addressed with support from welfare agencies and the community, in order to help prevent re-offending.
- Bring discriminatory legislation, as well as the discriminatory application of seemingly gender-neutral legislation, in line with international standards.
- Protect victims of human trafficking and migrant workers from further victimization.

Clearly the problems relating to women's imprisonment go far deeper and are too complex to be eradicated only by the measures suggested above. To achieve sustainable success, legislative measures and a change in criminal justice policies need to be accompanied by interventions to eliminate all forms of violence against women, and discriminatory attitudes in all spheres of society, with awareness raising, education and training, in parallel to law reform.

Nevertheless, much can be achieved by applying gender-sensitive criteria to criminal justice policies, legislation and practice, as suggested below.

1. Legal assistance on arrest

The International Covenant on Civil and Political Rights, Articles 9 (3) and 14 set out the key safeguards and guarantees applicable during pre-trial, trial and appellate stages. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Standard Minimum Rules guarantee detainees' right to legal counsel immediately after arrest and during the entire criminal justice process. Indigent detainees and prisoners are entitled to legal counsel provided by state authorities, free-of-charge.

In addition, the Beijing Declaration and Platform of Action⁸⁵ (Article 63 (a)) calls on governments to "ensure access to free or low cost legal services, including legal literacy, especially designed to reach women living in poverty".

⁸⁵ Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 and A/CONF.177/20/Add.1.

States have an obligation to ensure that women are given access to justice on an equal basis with men, and in line with universally accepted principles, set out in ICCPR, among others. In order to counterbalance the disadvantaged status of women in the criminal justice system, described in chapter 1, section 1, States should also consider taking positive action to improve women's access to justice, as recommended by the Beijing Declaration and Platform for Action.

Suggested key measures:

- Recognizing the particular vulnerability of women in the criminal justice system, States should take measures to ensure that indigent female suspects have access to low cost or free legal aid services, immediately on arrest, at least on an equal basis as indigent men;
- Gender sensitivity should form part of the training of law enforcement officials and staff of pre-trial detention facilities. Staff should be required to, and be in a position to, assist all female detainees with sensitivity, demonstrating particular care and patience in the case of illiterate or uneducated women, to understand their legal rights, by providing full explanation in a language that they can understand, and help them in accessing legal counsel, paralegal aid services or relevant NGOs.

2. Diversion from prosecution

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)

5.1 Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a set of established criteria shall be developed within each legal system. For minor cases the prosecutor may impose suitable noncustodial measures, as appropriate.

Since a large proportion of women have mental healthcare needs, are drug and/or alcohol dependent, suffer from the trauma of domestic violence or sexual abuse, diverting them to a suitable treatment programme would address their needs much more effectively than the harsh environment of prisons.

The police, prosecutors and courts should have an array of options available to them to divert offenders from prosecution and they should be encouraged to use them for women who, in a vast majority of cases, do not pose a risk to the public.

Such options may include:

- Absolute or conditional discharge
- Verbal sanctions
- An arbitrated settlement

- Restitution to the victim or a compensation order
- Community service order
- Victim offender mediation
- Family group conference
- Another restorative process, such as sentencing circles.

The findings about the background and problems of women offenders included in “A Review of the Conditions in Member States of the Council of Europe”, of the Quaker Council for European Affairs, indicated that “there could be particular benefits from family group conferencing and circle sentencing. The majority of women offenders are the mothers of children under 16 years old and are generally the sole or main carers. By enabling victims, the women offenders, their families and the community to meet and agree both on how best to repair the harm and on how to re-integrate the offenders into society and support their children, the outcomes are more likely to stop further offending and reduce the possibility of their children in turn becoming offenders”.⁸⁶

3. Pre-trial detention

International Covenant on Civil and Political Rights

Article 9 (3)

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)

6. Avoidance of pre-trial detention

6.1 Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.

6.2 Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings.

Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment

Principle 39

Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

⁸⁶ Women in Prison, A Review of the Conditions in Member States of the Council of Europe, Executive Summary, The Quaker Council for European Affairs, February 2007, p. 8.

In many countries a large proportion of women are in pre-trial detention, awaiting their trials, sometimes for years and beyond the sentence matching the offence with which they are charged. Where alternatives to pre-trial detention, other than monetary bail,⁸⁷ are rarely applied, and where access to legal assistance is minimal, those who cannot afford to pay for bail or legal counsel are held in custody for prolonged periods awaiting their trials. Those who are most affected are the poor and disadvantaged. As such, women constitute a part of the growing numbers of prisoners in pre-trial detention in many countries. They are more likely to be unable to pay the surety required for bail, due to their economic disadvantage in most societies. A majority of women offenders are illiterate and less aware of their legal rights.

Women in pre-trial detention

In **Nigeria** of 777 women prisoners, 577 were pre-trial detainees in 2005. The pre-trial period could last from 1 to 15 years.^a

In **Malawi** 65 per cent of women prisoners were on remand in 2001, which was considered to be low in comparison to other countries in Africa.^b

In **India** more than 70 per cent of the female prison population was under trial in 1999.^c Many spent 4-5 years in pre-trial detention for offences which carried a far lesser maximum prison sentence.

Similar figures applied to **Bolivia** (77 per cent), **Mexico** (44.6 per cent), **Colombia** (53.5 per cent) and **Rwanda** (50-75 per cent) according to figures published in 2005.^d

South Africa: Women in pre-trial detention, bail and poverty^e

On 28 February 2007, there were 3,559 female prisoners of whom 1,087 were awaiting trial and 2,472 were sentenced. Research undertaken by the Judicial Inspectorate of Prisons^f showed that approximately a quarter of awaiting-trial females had been granted bail but remained in detention because they did not have the money to pay for bail. Some of these women's bail was less than \$28. Of sentenced women, approximately a quarter received a fine as an alternative to imprisonment. The courts had found that these women posed no danger to society, but again it was a case of their poverty that kept them in prison since they were unable to pay the fines imposed.

^aAgomoh, U.R., Ogbozor, E.N., The State of Women Prisoners in Nigeria: Assessment of Problems and Options, PRAWA/Nigeria, paper presented at the 11th International Conference on Penal Abolition (ICOPAXI), held in Tasmania, Australia, 9-11 February 2006.

^bPrisons in Malawi, 17 to 28 June 2001, Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa, Series IV, No. 9, African Commission on Human and Peoples' Rights, p. 6.

^cShankardass, R.D., Roy, N., Seshadri, V., Workshop on New Models of Accessible Justice: The India Experience (Special Focus on Women and Juveniles), the National Commission for Women, Penal Reform International and Penal Reform and Justice Association, 2000, India, p. 5.

^dWomen in Prison, A commentary on the Standard Minimum Rules for the Treatment of Prisoners, op. cit., pp. 82-83.

^eDr. Nicolien Du Preez, College of Law, Department of Penology, University of South Africa, personal correspondence.

^fJudicial Inspectorate, op. cit. (n 4) 7.

In some countries where extra-marital sex (*zina*) comprises a criminal act, victims of rape and girls who have run away from home to escape forced marriages are held in pre-trial detention during which time their cases are investigated to determine

⁸⁷ The term "monetary bail" is used to refer to the requirement of the temporary placement of cash in the possession of a court to guarantee that the accused will conform to the conditions set for pre-trial release.

whether consensual sex outside of marriage took place.⁸⁸ In other countries pre-trial detention may be used as a form of protective custody for victims of rape, to protect the victim as well as to ensure that she will testify against her rapist at court.⁸⁹ Both of these practices are unacceptable, further victimizing women and putting them at risk of further abuse. Most importantly, such practices deter women from reporting rape and sexual abuse, thereby allowing perpetrators to escape justice.

In this context, the 2003 report of the Working Group on Arbitrary Detention to the Commission on Human Rights stated:

“In its annual report for 2001 (E/CN.4/2002/77 and Add.1 and 2), the Working Group had recommended, with regard to the detention of women who have been the victims of violence or trafficking, that recourse to deprivation of liberty in order to protect victims should be reconsidered and, in any event, must be supervised by a judicial authority, and that such a measure must be used only as a last resort and when the victims themselves desire it.”⁹⁰

The impact of being held in pre-trial detention, even for short periods, can be more severe for women than men, particularly if the woman is the sole carer of the children. A woman living in insecure or rented accommodation is likely to lose this when she goes to prison.⁹¹ She is also likely to lose her job, if she was employed.⁹² It is often difficult or impossible for such women to regain custody of their children.⁹³ Therefore even a short period in prison may have damaging, long-term consequences for the women and children concerned.

Suggested key measures:

- In line with the United Nations Standard Minimum Rules for Non-custodial Measures, Rule 6, female suspects, who typically do not pose a risk to society, should not be detained pre-trial unless exceptional circumstances are present.
- It is important that the authority that must decide whether to impose or continue pre-trial detention has a wide range of alternatives at its disposal, in addition to monetary bail. The following alternatives may be considered:
 - to appear in court on a specified day;
 - not to
 - engage in particular conduct,
 - leave or enter specified places or districts, or
 - meet specified persons;

⁸⁸ See for example, UNODC, *Afghanistan: Female Prisoners and their Social Reintegration*, op. cit. pp. 24, 25.

⁸⁹ See for example, Asia Watch: *Prison Conditions in India*, April 1991, p. 26.

⁹⁰ Report of the Working Group on Arbitrary Detention, Chairperson-Rapporteur, Louis Joinet, Commission on Human Rights, 16 December 2002, UN Doc. E/CN.4/2003/8, para. 65.

⁹¹ *Women in prison: a commentary on the Standard Minimum Rules for the Treatment of Prisoners*, op. cit., p. 85.

⁹² *Ibid.*, p. 85.

⁹³ *Ibid.*, p. 85.

- to remain at a specific address;
- to report on a daily or periodic basis to a court, the police or other authority;
- to surrender passports or other identification papers;
- to accept supervision by an agency appointed by the court;
- to submit to electronic monitoring.
- In deciding whether to detain a woman during trial proceedings, courts should take into account her parental status and other caring responsibilities (such as elderly members of the family, parents with disabilities etc). Courts may be required, for example, to consider reports compiled by social services on the probable impact of the mother's detention on the children and other family members, and the arrangements for the children's care, in the absence of the mother.
- Where extra-marital sex comprises a criminal offence, women suspected of having committed this act should not be held pre-trial as a matter of course, as they are in some countries, while their cases are being investigated. Those claiming to have been raped or have escaped forced marriages should be referred to NGOs and other organizations that assist such persons and to shelters, without delay.
- Pre-trial detention should not be used as “protective custody”. Other means of protection, for example, in shelters managed by independent bodies, NGOs or other community services, should be used.

4. Sentencing

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)

8. Sentencing dispositions

8.1 The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.

4.1 Alternatives to prison for non-violent offences

The toughening of sentencing policies has led to the growth in prison populations in many countries worldwide and in particular to a disproportionate increase in the imprisonment of women. The faster increase in the rate of women's imprisonment in some countries, in comparison to men, may be accounted for by the much higher proportion of non-violent offences among women prisoners—offences for which they would not have been imprisoned in the past—coupled with their economic and social vulnerability in most societies. Women are generally less likely than men to be able to afford fines, and in some jurisdictions their economic, social and mental vulnerability may be assessed as risk factors, rendering them ineligible for consideration for non-custodial sanctions and measures.

Women imprisoned for non-violent offences

In the United Kingdom 41 per cent of sentenced female prisoners were held for drug-related offences in 2002.^a 18 per cent were imprisoned for theft and fraud. More women were sent to prison in 2002 for shoplifting than any other crime. They accounted for nearly a third of all women sentenced to immediate custody in 2002.^b The rise in the female prison population was explained by a significant increase in the severity of sentences, rather than an increase in crime rates.^c For example, at the Crown Court 8 per cent of women convicted of motoring offences went to prison in 1991. By 2001, that proportion had increased to 42 per cent. A woman convicted of theft or handling stolen goods was twice as likely to be sentenced to a prison term by the Crown Court in 2002, compared to 1991. At magistrates' courts, the chances of a woman receiving a custodial sentence had risen seven-fold.^d

In the United States, the number of women convicted of property offences in State courts increased by 44 per cent between 1990 and 1996; the proportion of women imprisoned for drug-related offences rose by 37 per cent, with conviction for possession increasing by 41 per cent.^e In 1996 convictions in State courts for violent offences constituted 8.4 per cent of offences committed.^f

In Moscow in 2001, 64 per cent of women in pre-trial detention had been charged with theft.^g In Croatia, 7.8 per cent of women were imprisoned for violent offences in 1998, with the rest having been convicted of property offences, crimes against public safety, traffic offences and offences relating to the authenticity of documents.^h In the Czech Republic in the same year the prosecution of over one third of all women involved property-related offences, another one third involved economic crimes. In the same year women comprised 9 per cent of all violent criminal offenders.ⁱ

^aPrison Reform Trust, Factfile, July 2004, p. 10.

^bIbid., p.10.

^cIbid., p.10.

^dIbid., p. 10.

^eBureau of Justice Statistics, Special Report, Women Offenders, Dec. 1999, Revised 10/3/2000, p. 5.

^fIbid.

^gMoscow Centre for Prison Reform (www.prison.org).

^hWomen in Prison in Central Europe, Overview and Statistics, Penal Reform International, Women in Prison information pack.

ⁱIbid.

Most of these offenders do not pose a risk to the public. They could be dealt with much more effectively and at less expense to the State if they were sentenced to non-custodial sanctions. Crimes of poverty, such as theft and other property offences, are unlikely to be reduced by imprisoning women, often single mothers or sole carers of their families, causing the further impoverishment of the family, possible loss of a job and accommodation, and the less likelihood of the offender to find employment following release, due to her criminal record. In addition, women often commit crimes due to other underlying factors, such as substance addiction and psychosocial disabilities. Such problems are much better treated in the community than in prisons, where mental health is likely to deteriorate.

Suggested key measures:

- In line with Rule 8 of the Tokyo Rules, legislators should ensure that a range of non-custodial measures and sanctions are available in legislation as alternatives to imprisonment.
- Judicial authorities should be encouraged to impose alternatives to imprisonment in the cases of female offenders who do not pose a risk to the public,

taking into consideration their rehabilitative needs, caring responsibilities, and the particularly harmful impact of imprisonment on women.

- As recommended by Rule 8.2 of the Tokyo Rules, sentencing authorities may dispose of cases in the following ways:
 - Verbal sanctions, such as admonition, reprimand and warning;
 - Conditional discharge;
 - Status penalties;
 - Economic sanctions and monetary penalties, such as fines and day-fines;
 - Confiscation or an expropriation order;
 - Restitution to the victim or a compensation order;
 - Suspended or deferred sentence;
 - Probation and judicial supervision;
 - A community service order;
 - Referral to an attendance centre;
 - House arrest;
 - Any other mode of non-institutional treatment;
 - Some combination of the measures listed above.
- Investment should be made in devising suitable alternatives for female offenders, in order to combine above measures with interventions to address the most common problems underlying offending behaviour in women, such as therapeutic courses and counselling for victims of domestic violence and sexually abuse, suitable treatment for those with mental disabilities, among others.

4.2 Drug-related offences

In many countries offenders who are imprisoned for drug-related offences make up a large proportion of the prison population, including women.⁹⁴ In part this is a result of national and international efforts to combat the trafficking in illicit drugs. However, women are rarely major players in the drugs trade. Their criminal offences are often an outgrowth of their own addiction or due to poverty. Women are often used as drug couriers to smuggle drugs across borders for small sums of money. They come from poor countries and sometimes do not understand the risks involved and implications of the acts they agree to perform.

⁹⁴ For example, women in prison for drug offences comprise 71 per cent of the prison population in Portugal, between 40 and 52 per cent in two prisons in Greece, 50 per cent in Iceland, 44 per cent in Luxembourg, 40 per cent in Norway, 38 per cent in Latvia and the Netherlands, 36 per cent in Sweden, 35 per cent in England and Wales and Georgia (see *Women in Prison*, op. cit., p. 32).

Drug couriers in the United Kingdom

In the UK, 19 per cent of the female prison population constituted foreigners at the end of June 2005.^a 80 per cent of them were held on drug offences.^b Women selected for the task were typically in their 30s with several children depending on them. They were serving 6-15 year sentences.

Mandatory sentencing and drug offences in the United States

In the United States, the Department of Justice found that women were overrepresented among low level drug offenders who were non-violent, had minimal or no prior criminal history, and were not principal figures in criminal organizations or activities, but nevertheless received sentences similar to "high level" drug offenders under the mandatory sentencing policies. From 1986 to 1996 the number of women sentenced to state prison for drug crimes increased ten-fold. Nationally one in three women in prison and one in four women in jail were incarcerated for violating a drug law.^c

^aPrison Reform Trust, Factfile, April 2006, p. 15.

^bLyon, J., Director, Prison Reform Trust, Guardian, 27 April 2006.

^cAmnesty International, Women in Prison Factsheet, August 2005, citing Department of Justice, Bureau of Justice Statistics, Prisoners in 1997. (www.amnestyusa.org/women)

Most offenders charged with drug offences could be dealt with more effectively by alternatives to imprisonment targeted specifically at the drug problem, rather than imprisonment. The major international instruments, including the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances⁹⁵ and the Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations⁹⁶ recognize this paradox. While their primary focus is combating drug trafficking, they call on governments to take multidisciplinary initiatives,⁹⁷ of which alternatives to imprisonment are a key part. In some countries, diversion from the criminal justice system for illicit drug users is formalized through drug education and treatment programmes for first time offenders.

A review of policies and legislation relating to drug-related offences needs to be undertaken in many countries, in order to reduce the number of drug users sent to prison, the overall prison population and levels of prison overcrowding. Sentencing laws and practices for non-violent drug-related offences should place emphasis on non-custodial sanctions and measures, aiming to treat drug addiction. Such a reform policy would affect the sentences of a large proportion of women who are in prison for drug-related crimes, but whose imprisonment does not serve the purposes of justice or reintegration.

Suggested key measures:

- Harsh sentencing for drug trafficking offences needs to be reviewed, ensuring that significant distinctions exist between sentences foreseen for major players in the narcotics trade and between small players, such as women being used as drug couriers.

⁹⁵ UN Doc. E/CONF.82.15.

⁹⁶ A/RES/S-20/3 of 8 September 1998.

⁹⁷ See Boister, N., *Penal Aspects of the UN Drug Conventions*, Kluwer, The Hague, 2001.

- Certain non-violent drug offences, including possession of drugs, should be decriminalized.⁹⁸
- Mandatory sentences for drug offences should be removed. Judges should be allowed to use discretion in sentencing to prevent the re-victimization of women who fall victim to drug traffickers. The courts should have the power to consider mitigating circumstances and the character or the criminal histories of those convicted of drug offences.
- Community based substance abuse programmes should be more widely utilized in the case of drug dependent offenders, who could be obliged to undergo treatment for their addiction, as part of an alternative sanction, while continuing to live in the community with supervision, instead of being imprisoned.
- The provision of gender-sensitive, women-only substance abuse treatment programmes in the community and women's access to such treatment, including by ensuring adequate provision for children of women undergoing treatment, should be improved.

GOOD PRACTICES

The United States and Australia: Drug Treatment Courts

For those offenders whose addiction and record of criminal behaviour are more entrenched, drug treatment courts, in use in United States and Australia, offer an intensive therapeutic approach to addressing addiction and associated criminal activity as an alternative to imprisonment. Drug treatment courts provide close monitoring by the judge and drug treatment court multidisciplinary team, a treatment plan, with reinforcement and reward, including reduction of time in the program for compliance, and sanctions, including short jail terms, for non-compliance. Successful completion usually requires a specific term in which the participant remains drug free and completion of the goals set in of the treatment plan.

Guyana: Reducing sentences for drug-related offences and using community sanctions

In Guyana, where young people and women were being imprisoned due to harsh laws for possession of drugs, including for small amounts, the government approved new legislation in 1999, the narcotics and psychotropic substance amendment bill. This bill allows courts to exercise discretion in imposing fines of 17 dollars and community service not exceeding 6 months for possession of not more than 5 grams of marijuana for personal use. Under the earlier law a person was fined up to 275 dollars and sentenced to 5-10 years' imprisonment. The problem of drug-related offences is thus being dealt with effectively and rehabilitation is being carried out simultaneously.^a

^aShankardass, R.D., Roy, N. and Seshadri, V., Workshop on New Models of Accessibly Justice: The India Experience (Special Focus on Women and Juveniles), National Commission for Women, Penal Reform International and Penal Reform and Justice Association, 2000, p. 10.

⁹⁸ Recommended also in the context of HIV/AIDS control strategies in prisons. See UNODC, WHO, UNAIDS, op. cit., p. 16

Thailand: Diversion from prosecution and compulsory treatment for drug abusers

In Thailand women prisoners comprised 17.2 per cent of the overall prison population in mid-2005, which is an exceptionally high proportion, in comparison to other countries worldwide.^b In 1997 close to half of all prisoners and 77 per cent of all female prisoners were convicted of drug-related offences.^c By 2002 the proportion of those imprisoned for drug-related offences had risen to 66.46 per cent.^d The ratio of female prisoners convicted of drug-related offences had risen to 88 per cent of the total female prison population.^e The actual number of women imprisoned for drug-related offences had increased from 6,581 in 1997^f to 28,286 in 2002, which constitutes an over four-fold rise in five years.

The government of Thailand responded effectively to the situation with the implementation of the Narcotic Addict Rehabilitation Act of 2002, which stipulates diversion from prosecution and compulsory treatment for drug abusers. As a result the prison population is reported to be showing a decreasing trend. By 2005 Thailand was deploying a drug policy which included comprehensive demand reduction strategies, together with strict control and penalties for suppliers, in addition to diversion and treatment for drug addicts.^g

^bWalmsley, R., "World Female Imprisonment List", International Centre for Prison Studies, King's College London, 2006., p.4.

^cSuriyawong, V., Thai Correctional System Profile, November 1997, p. 15.

^dThai Correctional Service website, www.correct.go.th/statis.htm.

^eIbid.

^fSuriyawong, V., Thai Correctional System Profile, November 1997, p. 15.

^gResearch on the Trends in Drug Abuse and Effective Measures for the Treatment of Drug Abusers in Asian Countries, UNAFEI, 2005, p.27.

4.3 Pregnant women and mothers

African Charter on the Rights and Welfare of the Child, 1999

Article 30: Children of Imprisoned Mothers

1. States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular:

- (a) ensure that a non-custodial sentence will always be first considered when sentencing such mothers;
- (b) establish and promote measures alternative to institutional confinement for the treatment of such mothers;
- (c) establish special alternative institutions for holding such mothers;
- (d) ensure that a mother shall not be imprisoned with her child;
- (e) ensure that a death sentence shall not be imposed on such mothers;
- (f) the essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.

As explained in chapter 1, prisons are not designed for pregnant women and women with small children. Every effort needs to be made to keep such women out of prison, taking into account the gravity of the offence committed and the risk posed by the offender to the public.

In this context, the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offender recommended that women offenders should be “treated fairly and equally during arrest, trial, sentence and imprisonment, particular attention being paid to the special problems which women offenders encounter, such as pregnancy and child care...”, noting that “deinstitutionalization is an appropriate disposition for most women offenders to enable them to discharge their family responsibilities.”⁹⁹ The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders determined that “the use of imprisonment for certain categories of offenders, such as pregnant women or mothers with infants or small children, should be restricted and a special effort made to avoid the extended use of imprisonment as a sanction for these categories.”¹⁰⁰

GOOD PRACTICE: SOUTH AFRICA

The Constitutional Court suspends the imprisonment of a mother, taking into account the best interests of her children^a

In a case reported in September 2007, which involved an appeal by a woman who had been sentenced to four years imprisonment, the Constitutional Court suspended the portion of the sentence which had not yet been served, taking into account the interests of the offender's three children, aged 16, 12 and 8.

The judge explained his decision as follows: “Ms Cawood’s [a social worker] report indicates that all three boys rely on M as their primary source of emotional security, and that imprisonment of M would be emotionally, developmentally, physically, materially, educationally and socially disadvantageous to them. In Ms Cawood’s view, should M be incarcerated, the children would suffer: loss of their source of maternal and emotional support; loss of their home and familiar neighbourhood; disruption in school routines, possible problems in transporting to and from school; impact on their healthy developmental process; and separation of the siblings.”

The court ordered to suspend for four years M’s imprisonment (of 45 months) on condition that she would not be convicted of an offence committed during the period of suspension, of which dishonesty was an element, and further on condition that she complied fully with the order’s provisions.

M was placed under correctional supervision in terms of section 276(1)(h) of the Criminal Procedure Act 51 of 1977 for three years.

^aIt must be noted that in these examples, it is not certain that the woman concerned will not be imprisoned when her child reaches the age of 14, but her behaviour will be taken into account at the time of the review of her sentence and if she has committed no further offences during the relevant period an alternative sentence, such as limitation of freedom, may replace the original sentence or the sentence may be cancelled.

Suggested key measures:

- Appropriate guidelines should be developed for courts whereby they would only consider custodial sentences for pregnant women and women with dependent children when the offence was serious and violent, the woman represented a continuing danger, and after taking into account the best interests of the child or children.

⁹⁹ Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Resolution 9, Specific needs of women prisoners, A/CONF.87/14/Rev.1.

¹⁰⁰ Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Resolution 19 “Management of criminal justice and development of sentencing policies”, Report of the 8th United Nations Congress on the Prevention of Crime and Treatment of Offenders, 1990, UN Doc. A/Conf.144/28/Rev. 1.

- When certain categories of offences are committed by a pregnant woman or a mother with a small child, sentences may be deferred, for example, until the child reaches a certain age and reviewed at that time, based on pre-established criteria, which should provide eligibility for the cancellation of imprisonment or reduction to a non-custodial sanction under certain conditions (e.g. not to commit an offence during that period).

GOOD PRACTICE

Legislation targeting pregnant women and women with children^a

In Kazakhstan women's sentences can be suspended, if they have a child of up to 14 years, except for those who have been sentenced to 5 years and over, for grave or especially grave offences. (Criminal Code of the Republic of Kazakhstan, Article 72)

In Russia the execution of a sentence may be postponed and then reduced or cancelled for pregnant women or women who have children under 14 years of age, with the exception of those "sentenced to imprisonment for terms longer than five years for grave and specially grave crimes" (Criminal Code of the Russian Federation, Article 82)

^aIt must be noted that in these examples, it is not certain that the woman concerned will not be imprisoned when her child reaches the age of 14, but her behaviour will be taken into account at the time of the review of her sentence and if she has committed no further offences during the relevant period an alternative sentence, such as limitation of freedom, may replace the original sentence or the sentence may be cancelled.

5. Discriminatory legislation and trial procedures

The Universal Declaration of Human Rights

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

International Covenant on Civil and Political Rights

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Convention on the Elimination of All Forms of Discrimination against Women

Article 2

States Parties condemn the discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and to this end, undertake:

(a) To embody the principle of equality of men and women in their national constitutions and other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Declaration on the Elimination of Discrimination against Women

Article 1

Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity.

Article 2

All appropriate measures shall be taken to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women, in particular:

(a) The principle of equality of rights shall be embodied in the constitution or otherwise guaranteed by law;

(b) The international instruments of the United Nations and the specialized agencies relating to the elimination of discrimination against women shall be ratified or acceded to and fully implemented as soon as practicable.

Article 7

All provisions of penal codes which constitute discrimination against women shall be repealed.

In some countries, legislation deriving from certain interpretations of religious laws and traditions result in discrimination against women and their imprisonment, sometimes in large numbers, often in violation of such countries' international obligations and own constitutions.

Offences of “immoral conduct” have had a particular impact on the size of the female prison population in some countries. Often, although laws relating to “moral offences” may appear gender-neutral, they are invoked much more often against women than men. Where such laws exist, usually discrimination in the application of such laws is compounded by discriminatory trial proceedings. For example, the testimony of a victim of violence may not be considered as evidence and the testimony of women may have half the value of that of men, based on religious principles. Thus, although both men and women can be guilty of adultery, for example, women are much more likely than men to be penalized for this “moral offence”, due to women's vulnerable status and criminal proceedings which discriminate against them. A cause for particular concern is that where “adultery” and “fornication” are criminal offences and rape is not clearly defined in the criminal code, victims of rape may be detained and imprisoned on charges of “adultery” or “fornication”, leading to their further victimization.

Under such laws, women are also imprisoned for running away from home, often trying to escape forced and child marriages or domestic violence. Laws on divorce, which discriminate against women on religious grounds in some countries, also lead to the imprisonment of women on charges of adultery.

Women imprisoned for moral crimes

In 1992, Human Rights Watch found that between 50 and 80 per cent of all female detainees interviewed in Pakistan were imprisoned under the Hudood Ordinances, which cover the offences of “adultery”, “fornication” and “rape”, among others.^a By 2005 informed estimates suggested that tens of thousands of cases under the Hudood laws were under process at various levels in Pakistan's legal system.^b

In 2006 UNODC found that 50 per cent of women in Pul-e Charki Prison in Kabul were charged with or convicted of moral offences, including zina and running away from home, combined with zina, in particular.^c

^aHuman Rights Watch, *Double Jeopardy*, 1992, p. 18 (The Hudood establish the conditions under which Islamic Law can be applied for certain crimes. Hudood (singular: “hadd” meaning limit) punishments carry mandatory sentences under Islamic Law).

^bHuman Rights Watch World Report, 2006, p. 296.

^cUNODC, *Afghanistan: Female Prisoners and their Social Reintegration*, op. cit. p. 40. (The offence of zina, refers to all sexual relations outside of marriage).

Suggested key measures:

- Discriminatory legislation which does not respect the equal rights of women undermines the fundamental human rights of women. Such laws need either to be abolished or reviewed and brought into line with international human rights instruments such as Article 2 of the Universal Declaration of Human

Rights and Articles 2 and 3 of the International Covenant on Civil and Political Rights, as required by Article 2(2) of ICCPR, Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women and Articles 2 and 7 of the Declaration on the Elimination of Discrimination against Women.

- Similarly, the disparate application of seemingly gender-neutral legislation needs to be reviewed and safeguards put in place to ensure, through law and other appropriate means, the practical realization of the principle of non-discrimination against women.
- Discriminatory trial proceedings, which place a higher value on the statement of men and which do not grant women equal entitlement to all minimum guarantees set out in ICCPR, need to be brought in line with the principles of non-discrimination set out above and with Article 14 of ICCPR in particular, which guarantees all persons the right, in full equality, to a fair trial.
- In countries where “adultery” and “fornication” comprise criminal acts in particular, the offence of rape should be clearly defined as a separate article in legislation and stringent safeguards put in place to prevent victims of rape being penalized under articles that prohibit adultery and fornication.

The failure of States to protect women’s human rights, including their sexual and reproductive health rights, may also lead to the imprisonment of women in some countries, on charges of abortion, infanticide and homicide, as explained earlier.

The right to sexual and reproductive health

As confirmed by the Commission on Human Rights in 2003, “sexual and reproductive health are integral elements of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.^a

“.....reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents. In the exercise of this right, they should take into account the needs of their living and future children and their responsibilities towards the community. The promotion of the responsible exercise of these rights for all people should be the fundamental basis for government- and community-supported policies and programmes in the area of reproductive health, including family planning.”^b

[...]

^aThe right of everyone to the enjoyment of the highest attainable standard of physical and mental health Report of the Special Rapporteur, Paul Hunt, 16 February 2004, UN Doc. E/CN.4/2004/49, para. 9.

^bThe International Conference on Population and Development Programme of Action, Cairo (A/CONF.171/13, chap. I, sect. 1), Chapter VII, Para 7.3, cited in Report of the Special Rapporteur, Paul Hunt, UN. E/CN.4/2004/49, 16 February 2004, para. 18.

".....Where abortions are legal, they must be safe: public health systems should train and equip health service providers and take other measures to ensure that such abortions are not only safe but accessible. In all cases, women should have access to quality services for the management of complications arising from abortion. Punitive provisions against women who undergo abortions must be removed."^c

CEDAW Committee General Recommendation 24 (20th Session, 1999), recommends: "[w]hen possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion."^d

Recognizing (and committing to deal with) "the health impact of unsafe abortion as a major public health concern", governments at the Fourth World Conference on Women decided they would "consider reviewing laws containing punitive measures against women who have undergone illegal abortions."^e

^cReport of the Special Rapporteur, Paul Hunt, U.N. E/CN.4/2004/49, 16 February 2004, para. 30.

^dGeneral recommendations made by the Committee on the Elimination of Discrimination against Women. (www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm)

^eReport of the Fourth World Conference on Women, Beijing, 4-15 September 1995, paras 106 (j) and (k).

Although the full examination of these issues and their impact on the size of the female prison population, are beyond the scope of this handbook, human rights considerations would require States to review their legislation relating to the reproductive health rights of women, to ensure that women are not put in a position to resort to acts defined as illegal in national legislation, including abortions, or that they are not convicted of offences such as homicide or infanticide, for apparently having had abortions, miscarriages or having delivered stillborn babies. In this context, the requirements to ensure that all suspects, including indigent women, have access to justice, and are accorded the right to be tried in accordance with the requirements of ICCPR, Articles 9(3) and 14 in particular, takes on added significance.

6. Foreign national women

The United Nations High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking^a

Recommended Principles on Human Rights and Human Trafficking

Protection and assistance

7. Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.

8. States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.

^aText presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1).

Recommended Guidelines on Human Rights and Human Trafficking

Guideline 2: Identification of trafficked persons and traffickers

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

5. Ensuring that trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons.
6. Ensuring that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody.

Foreigners are vastly overrepresented in the criminal justice system of countries which have a large migrant labour force, and the alarming rise can partly be attributed to the increasingly punitive measures being adopted against “aliens” in many countries. As such, trafficked women find themselves behind bars, having been convicted of crimes against public morality, prostitution or breaking immigration rules, although they themselves are the victims of poverty, false promises, coercion and exploitation. In some countries, particularly in the European Union, a large proportion of foreign national women have been convicted on drugs charges, many of them small players in the drugs trade, as described in section 4.2 above.

Punitive immigration laws in some countries have led to the imprisonment of immigrant workers whose status is illegal or persons trying to escape abusive situations. Generally from extremely impoverished backgrounds, unaware of their legal rights and vulnerable to abuse, migrant female domestic workers comprise a particularly vulnerable group. They may be imprisoned for offences such as fornication and pregnancy, (including, for example, when apparently raped by their employers), fleeing their places of employment, for reporting their employers for physical and sexual abuse and prostitution, among others.

Detained domestic workers may be routinely denied prompt access to their consular officials. Interpreters are often not provided during interrogation by the police. Sentences can be based on the signing of confessions which the foreign national does not understand.

Trafficked persons are sometimes treated as criminals rather than as victims, whether in States of destination, transit or origin. In States of destination, they may be prosecuted and detained because of irregular migration or labour status. Alternatively, immigration authorities may simply deport them to the State of origin if their immigration status is irregular. Trafficked persons returning to their State of origin may also be subjected to prosecution for using false documents, having left the State illegally, or for having worked in the sex industry. Criminalization limits the trafficking victims’ access to justice and protection and decreases the likelihood that they will report their victimization to the authorities. Given the victims’ existing fears for their personal safety and of reprisals by the traffickers, the added fear of prosecution and punishment can only further prevent victims from seeking protection, assistance and justice.¹⁰¹

¹⁰¹ Toolkit to Combat Trafficking in Persons, Global Programme Against Trafficking in Human Beings, UNODC, 2006, p. 103.

Suggested key measures:

- States should ensure that legislation and practice provide maximum possible protection for foreign women, such as victims of human trafficking and migrant domestic workers, from further victimization.
- States should not prosecute trafficked persons for trafficking-related offences such as holding false passports or working without authorization, even if they agreed to hold false documents or to work without authorization.
- Whether prostitution is legal or not, States should not prosecute persons for being trafficked into sexual exploitation, even if the person originally agreed to work in the sex industry.
- Immigration offences should be decriminalized. International law dictates that persons who break immigration laws, if detained, should not be held together with prisoners charged with or convicted of criminal offences. Immigration detainees should be held in separate facilities, designed for this purpose offering material conditions and a regime appropriate to their legal situation and staffed by suitably-qualified and specially trained personnel.¹⁰²
- In accordance with international law, all foreign national detainees should have access to their consular representatives, legal counsel and interpreters immediately after arrest. All interrogations should be carried out in the presence of a lawyer and interpreter.
- Foreign national women should not be disadvantaged in consideration for alternatives to prison due to their nationality and/or gender, at pre-trial and sentencing stage.
- Police, prosecutors and courts should take into account the parental status of foreign national women in deciding arrest, pre-trial detention, imprisonment and deportation. Considerations should include whether or not the offender has any dependent children in the country of arrest or home country, whether or not she is a single mother or the sole carer of the family, among others. Measures and sanctions imposed should take into account the best interest of the children and their especially vulnerable status, as well as the particular difficulties foreign national women face in prison, with priority being given to alternatives to imprisonment, wherever possible.

For more details and recommendations on issues relating to foreign national prisoners, please refer to *UNODC Handbook on Prisoners with Special Needs*, chapter on “foreign national prisoners”.

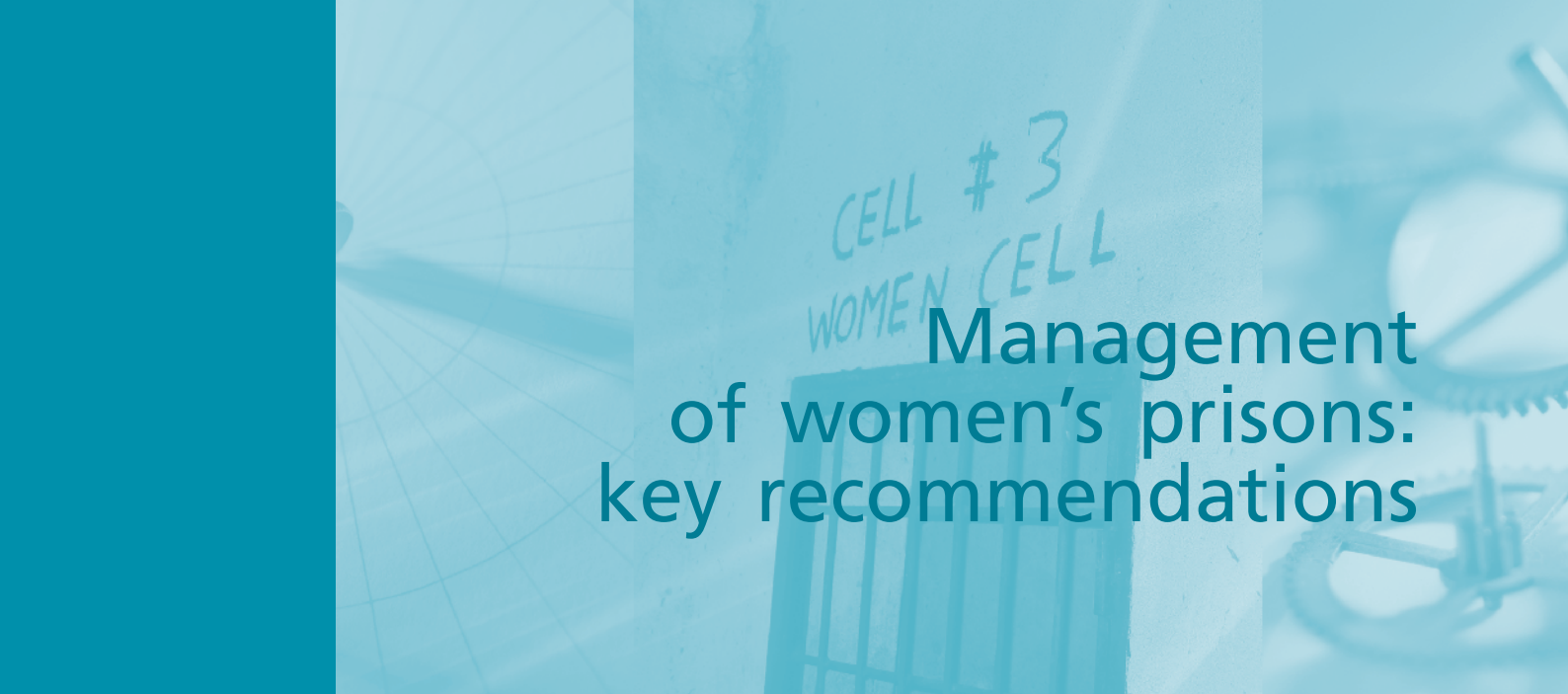
For foreign national prisoners under sentence of death, see, *UNODC Handbook on Prisoners with Special Needs*, chapter on “prisoners under sentence of death”.

For guidance on combating human trafficking and the protection of women within this context, see United Nations Convention against Transnational Organized Crime

¹⁰² 7th General Report [CPT/Inf (97) 10], para. 29.

adopted in Palermo, Italy in 2000 (the Palermo Convention), and the two Protocols which supplement the Convention: United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and The Protocol against the Smuggling of Migrants by Land, Sea and Air (the Palermo Protocols).

For guidance on practical measures to combat trafficking, see *UNODC Toolkit to Combat Trafficking in Persons, Global Programme Against Trafficking in Human Beings*, 2006. (http://www.unodc.org/pdf/Trafficking_toolkit_Oct06.pdf)



Management of women's prisons: key recommendations

Prison management

Ensure that prison management is gender-sensitive, including the following components:

- Taking affirmative action to counter-balance discrimination encountered by women prisoners;
- Adopting a gender-sensitive management style;
- Recognizing the different needs of female prisoners and providing programmes and services that address these needs.

Ensure that the multiple needs of women from ethnic and racial minority groups and foreign national prisoners are taken into account in programming.

Staff

Employ senior female prison staff in key positions;

Build the capacity of female staff and provide them with special training on the needs of female prisoners;

Provide psychosocial support to female staff;

Develop a clear policy against discrimination and sexual harassment in the workplace;

Train male staff on gender sensitivity, sexual misconduct and discrimination issues.

Assessment and classification

Develop a gender-sensitive risk assessment and classification system, which:

- Takes into account the very low risk most women offenders pose to others and the particularly harmful effects of high security measures have on them;
- Takes into account women's backgrounds, such as experience of domestic violence, as well as their caring responsibilities, in their allocation and sentence planning process;
- Ensures that women's sentence plans include programmes which meet their gender-specific needs;
- Ensures that those with mental disabilities are housed in the least restrictive accommodation and receive treatment.

Safety and security	Accommodate all female prisoners in accommodation which is physically separate from that occupied by men.
Separation and supervision	Ensure that women prisoners are supervised by female staff. If, contrary to the above recommendation, male staff are allowed to work in women's prisons, they should never be employed in contact positions responsible for the direct supervision of prisoners and safeguards should be stringently applied. Introduce clear policies and guidelines relating to sexual misconduct by staff in prisons, aiming to provide maximum protection to women prisoners.
Prisoner complaints	Establish clear and confidential prisoner complaints mechanisms, and ensure that the investigations of allegations of sexual misconduct and other forms of ill-treatment and torture are undertaken promptly and impartially by an independent authority, and that safeguards are in place to protect prisoners who complain from retaliation.
Prisoner searches	Ensure that male members of staff are never involved in the personal searches of female prisoners, and that intimate body searches are undertaken only by an external medical practitioner, and only if there is genuine justification. Consider eliminating intimate body searches altogether, by using alternative means of screening.
Body restraints	Reduce to a minimum the use of body restraints. Never use body restraints on pregnant women during medical examinations, transfer to hospital and birth.
Disciplinary segregation	Reduce to a minimum the use of disciplinary segregation.
Suicide and self-harm attempts	Develop therapeutic strategies to prevent suicide and self-harm. Develop a reception area and induction programme for new arrivals, which provide a supporting environment, encourages and facilitates contact with families and friends and ensures that all new entries are fully familiarized with the prison regime, including where to seek help when in need. Never punish prisoners for self-harm and suicide attempts.
Prisoner activities and programmes	Provide female prisoners equal access to work, vocational training and education as men. Introduce specific programmes that address the underlying factors that lead to criminal behaviour in women, such as: • Programmes addressing substance abuse issues; mental health; history of abuse and domestic violence. and • Programmes that address women's gender-related difficulties, such as: parenting and child visitation programmes; programmes to build confidence and life skills.

<i>Prisoner activities and programmes ongoing</i>	Find creative ways to compensate for resource problems, such as using a rotation system for classes and enabling peer education and skills training. Increase civil society participation in activities. Take into account the multiple gender-specific and cultural/linguistic/religious/spiritual needs of foreign national women and members of racial and ethnic minorities and indigenous peoples, in designing programmes and enabling such groups' access to them.
Sports and recreation	Ensure that women have equal access as men to sports and recreational facilities in prisons.
Healthcare	Ensure that prison conditions and services are designed to protect the health of all prisoners, recognizing that providing the underlying determinants of health is key to the protection of the physical and mental wellbeing of all prisoners. Ensure that prison health services are not isolated from civil healthcare services, and that collaboration between the two (and ideally integration of the two) forms part of prison health service management strategies and policies. Ensure that prisons have properly trained primary healthcare teams. Introduce a gender-specific framework for healthcare in women's prisons, which emphasizes reproductive and sexual health, mental health, treatment for substance abuse and counseling victims of violence. In developing responses to HIV/AIDS in penal institutions, to ensure that programmes and services are responsive to the unique needs of women, including, for example, prevention of mother to child transmission. Ensure that preventive healthcare measures of particular relevance to women are available. Ensure that the specific hygiene needs of women are met, including adequate sanitary facilities for the personal care of women with children, those who are pregnant, breastfeeding and menstruating. Provide staff training in basic medicine and first aid, including for children. Ensure that child healthcare specialists are accessible, when required.

Access to legal assistance	Provide information to offenders about their legal rights; Taking account of the particular challenges faced by many women in accessing justice, ensure that assistance is provided to female prisoners to contact lawyers, paralegal services and relevant NGOs, and provide facilities for meetings with lawyers, and if required interpretation services. Cooperate with NGOs and paralegal aid services in assisting indigent women in the criminal justice system, especially in countries and communities where legal aid may be limited or unavailable.
Contact with the outside world	Adopt measures and rules that match the particular needs of women for contact with their families and children. Take measures to compensate for the difficulties in undertaking family visits. (See Section 8.1 for suggestions) Consult with prisoners as to who should be allowed to visit them. Develop contact with the community. Train staff to conduct visits in an atmosphere of human dignity and provide a child-friendly environment for visits.
Preparation for release and post-release support	Cooperate with probation services, social welfare agencies and NGOs to design comprehensive and coordinated pre- and post-release reintegration programmes for women. Programmes should enable women to complete any educational or vocational training courses, and healthcare programmes, including substance addiction treatment programmes in the community. Utilize options such as open prisons and half-way houses to the maximum possible extent for female prisoners. Consider revising prison legislation and regulations to apply more liberal conditions for the granting of remission and parole in the case of women prisoners (especially mothers), in line with a gender-sensitive management policy. Ensure that protection is provided to women at risk after release, in cooperation with community protection agencies and NGOs.

Pregnant women and women with children in prison

On admission to prison, record the number of women's children, their personal details and locations (if outside prison).

Pregnant and nursing women

Provide pre- and post-natal care equivalent to that available in the community.

Ensure that post-natal care is provided to women who have recently given birth, but who do not have their babies with them in prison;

Ensure that pregnant women are transferred to civilian hospitals for childbirth.

Women with children in prison

Never use body restraints on pregnant women during transport to hospital to give birth and during birth.

Ensure that the development of children in prison is supervised by primary healthcare providers and a prison psychologist, and monitored by specialists in child development.

Establish nurseries in prisons where mothers can spend time with their children and which allow for mothers to participate in prison activities and programmes.

Provide other facilities and activities for the children of imprisoned mothers.

Never treat children in prison as prisoners.

Prepare the mother and child for separation and undertake the removal of the child from prison with sensitivity. Take decisions on separation on an individual basis, taking into account the best interests of the child.

After children are separated from their mothers provide women prisoners the maximum possible opportunity to meet with their children.

Pre-trial detainees

Accommodate pre-trial detainees and convicted prisoners separately. If exceptional circumstances hinder the strict application of this rule, then prison administrators must ensure that a different regime applies to those who have not yet been convicted.

Recognize the particularly vulnerable status of female pre-trial detainees and put in place measures to ensure that they are protected to the maximum possible extent. (See Safety and Security above).

Assist women prisoners to access lawyers, legal aid, paralegal aid services and relevant NGOs, in order to ensure that they have access to justice.

Taking into account that women detained in relation to “reproductive crimes” may be at heightened health risks during pre-trial detention, ensure that their special healthcare needs are addressed, and where necessary transfer them to community hospitals for treatment.

Girls in prisons

Separate strategies and policies in accordance with international standards need to be designed for the treatment and rehabilitation of children, including girls in conflict with the law, even when the numbers are limited.

When girls in conflict with the law are imprisoned:

Take into account the particularly vulnerable status of girls prisoners in the development and implementation of prison management policies and programmes.

Separate girl prisoners from adults and from boy prisoners.

Do not assign male staff to supervise girl prisoners or to places where they might get in direct contact with them. Recognising that female staff may also abuse girl prisoners, put in place and enforce stringent safeguards and procedures to protect girl prisoners.

Ensure that girl prisoners have equal access to education and vocational training as boy prisoners, as well as gender-specific programmes and consultation delivered by specialists in child psychology.

Provide pregnant girl prisoners with special support and care.

Foreign national women

Ensure that all foreign prisoners have regular access to their consular representatives, legal counsel and interpreters, equal access to information in a language they understand, as well as prison activities and other services.

Compensate for difficulties in family contact, e.g. by increasing the number of phone calls the women are allowed, allowing longer visits etc.

Provide language courses to foreign nationals who do not speak the language most commonly spoken in the prison.

Encourage NGO and other community support to foreign national prisoners, as well as peer support and self-help groups to be formed among foreign national women of the same nationality, to reduce the impact of isolation.

Consider the transfer of non-resident foreign national women prisoners to their home countries, especially if they have children in that country, as early as possible, if the offender so wishes and if there is no risk of harm to the prisoner.

Assist resident foreign national women who face deportation with access to legal counsel for any appeals process and with deportation procedures, as relevant.

Please also refer to *UNODC Handbook on Prisoners with Special Needs, Foreign National Prisoners*.



Reducing the female prison population: key recommendations

Legal assistance on arrest

Recognising the particular vulnerability of women in the criminal justice system, take measures to ensure that indigent female suspects have access to low-cost or free legal services, immediately on arrest, on an equal basis as indigent men;

Include gender sensitivity in the training of law enforcement officials and staff of pre-trial detention facilities.

Diversion from prosecution

Provide a wide range of options for police, prosecutors and courts to divert women who have committed minor and non-violent offences from prosecution, to suitable treatment or restorative justice programmes.

Pre-trial detention

Do not detain women in pre-trial detention, unless absolutely necessary.

Provide for a range of alternative options other than monetary bail, to ensure that women (and men) who cannot afford the financial security requirements of bail are not detained solely due to their poverty.

Take into account the parental status and other caring responsibilities of women and the interests of their children and families when deciding pre-trial detention.

In countries where extra-marital sex (*zina*) is a criminal offence, do not detain suspects in pre-trial detention while their cases are investigated. Victims of rape and other forms of sexual abuse or violence should be referred to appropriate services.

Do not use pre-trial detention as a form of protective custody. Other forms of protection, such as shelters, should be used.

Sentencing

Ensure that the circumstances of the offence and the vulnerability of the offender are taken into account during sentencing (e.g. the murder of a violent husband or partner).

Alternatives to prison for non-violent offences

Provide a wide range of alternatives to imprisonment for minor and non-violent offences, in legislation.

Encourage judicial authorities to impose alternatives to imprisonment in the cases of female offenders who do not pose a risk to the public, taking into consideration their rehabilitative needs, caring responsibilities, and the particularly harmful impact of imprisonment on women.

Develop gender-sensitive alternatives to prison, taking into account the most common needs of female offenders, such as counselling for victims of domestic violence.

Drug-related offences

Review policies and legislation relating to drug-related offences. Decriminalize certain drug offences, provide alternatives for others.

Ensure that significant distinctions exist between sentences foreseen for major players in the narcotics trade and small players, such as women being used as couriers.

Remove mandatory sentences for drug-related offences and allow judges to use discretion in sentencing to prevent the re-victimization of women who fall victim to drug traffickers.

Pregnant women and mothers

Develop guidelines for courts whereby they would only consider custodial sentences for pregnant women and women with dependent children when the offence was serious and violent and the woman represented a continuing danger, and after taking into account the best interests of the child (or children).

Discriminatory legislation and trial procedures

Bring all discriminatory legislation in line with the requirements of international standards and instruments, such as the Universal Declaration of Human Rights, ICCPR, CEDAW and the Declaration on the Elimination of Discrimination against Women.

Similarly, review the disparate application of seemingly gender-neutral legislation and put in place safeguards to ensure, through law and other appropriate means, the practical realization of the principle of non-discrimination against women.

Bring discriminatory trial proceedings, which do not grant women equal entitlement to all minimum guarantees set out in ICCPR, in line with the principle of non-discrimination guaranteed by international law, and Article 14 of ICCPR in particular, which guarantees all persons the right, in full equality, to a fair trial.

In countries where extra-marital sex (*zina*), comprises a criminal act in particular, the offence of rape should be clearly defined as a separate article in legislation and all safeguards put in place to prevent victims of rape being penalized under articles that prohibit “adultery” and “fornication”.

Foreign national women

Take into account the different circumstances and needs of resident and non-resident foreign national women;

Ensure that legislation and practice provides maximum possible protection for foreign women, such as victims of human trafficking and migrant workers, from further victimization.

Do not prosecute trafficked persons for trafficking-related offences and prostitution.

Decriminalize immigration offences and never detain persons who have broken immigration laws alongside prisoners charged with criminal offences.

Ensure that foreign national women are not disadvantaged in consideration for alternatives to prison due to their nationality and gender.

Ensure that police, prosecutors and courts take into account the parental status and other caring responsibilities of foreign national women in deciding arrest, pre-trial detention, imprisonment and deportation.



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- International Covenant on Economic, Social and Cultural Rights 1966
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
- Convention on the Rights of the Child 1989
- Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment 1988
- Standard Minimum Rules for the Treatment of Prisoners 1955
- Code of Conduct for Law Enforcement Officials 1979
- Standard Minimum Rules for Non-Custodial Measures 1990 (Tokyo Rules)
- Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules)
- Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988
- Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations 1998
- Convention on the Elimination of All Forms of Discrimination against Women 1981
- Declaration on the Elimination of Violence against Women 1993
- Declaration on the Elimination of Discrimination against Women, 1967
- United Nations Convention against Transnational Organized Crime, 2000
- United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

كيفية الحصول على منشورات الأمم المتحدة

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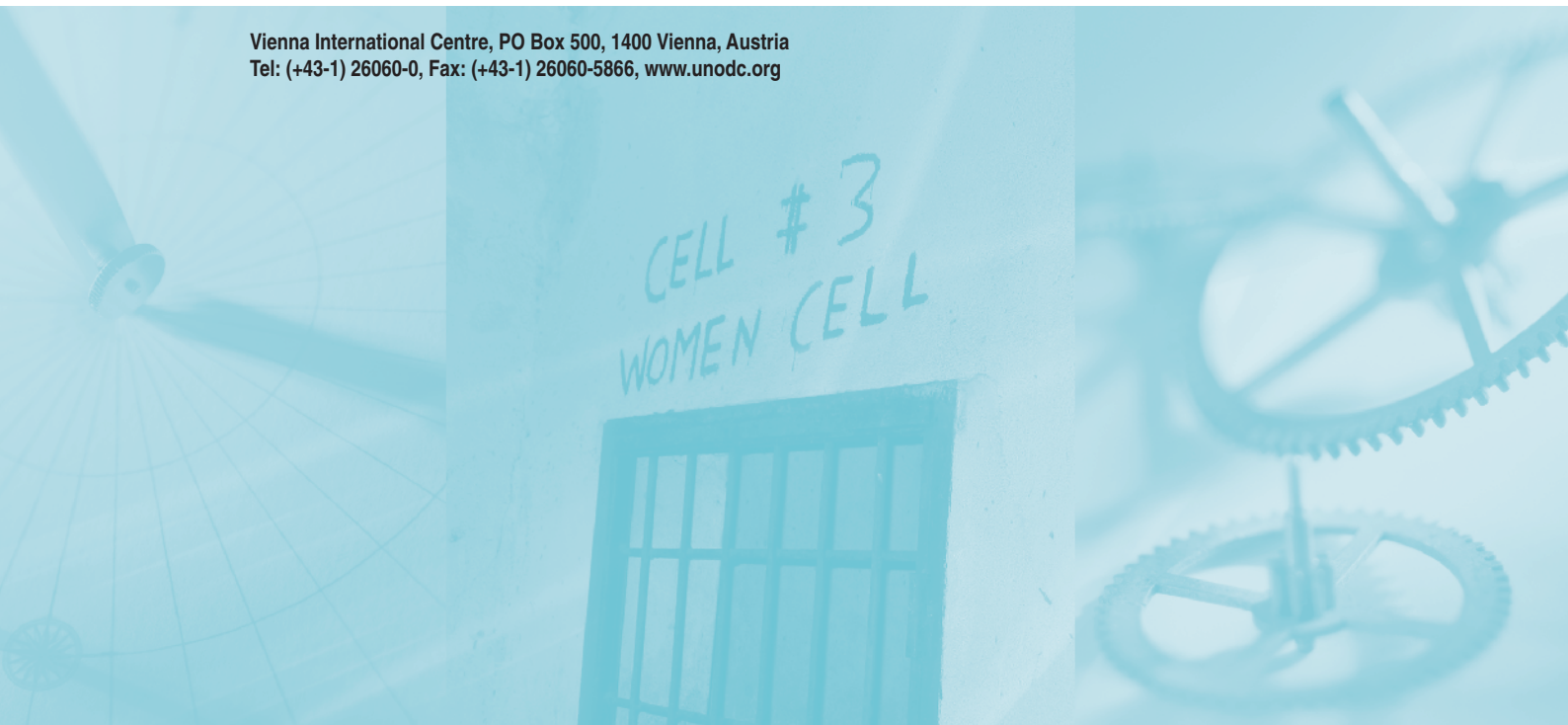
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